(26,655)

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1918.**

## No. 569.

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GEORGE A. COLE, ED MALLEY, GILBERT C. ROSS, ET AL., PETITIONERS,

*vs.*

JOSEPH RALPH.

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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No. 3069

[redacted]

Supreme Court, U.
FILED
JUL 20 1918
JAMES D. MAHER,
CLERK

# United States

# Circuit Court of Appeals

## For the Ninth Circuit.

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# Transcript of Record.

**(IN THREE VOLUMES.)**

---

JOSEPH RALPH,

Plaintiff in Error,

vs.

GEORGE A. COLE, ED MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER, and WILLIAM FORMAN,

Defendants in Error.

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**VOLUME I.**

**(Pages 1 to 352, Inclusive.)**

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**Upon Writ of Error to the United States District Court of the District of Nevada.**

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Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

State of Nevada,
County of Lander,—ss.

I, F. W. Whitburn, County Clerk and clerk of the Third Judicial District Court of the State of Nevada, in and for the County of Lander, do hereby certify that the Complaint, Petition for Removal, Notice of Application for Removal, Order and Bond, hereto attached are a full, true and correct copy of all the papers on file in this office in the case of Guy Davis, Noah Faubert and Geo. B. Thatcher, Plaintiffs, vs. Joseph Ralph, Defendant. A summons was issued in the above-entitled action on September 30, 1914, but the same has never been returned and filed in this office.

In Witness Whereof, I have hereunto set my hand and affixed the Official Court Seal this 8th day of December, A. D. 1914.

[Seal] F. W. WHITBURN,
County Clerk and Clerk of the Third Judicial District Court of the State of Nevada, in and for the County of Lander.

No. 1872. U. S. Dist. Court, Dist. Nevada. Filed Decr. 10th, 1914. T. J. Edwards, Clerk.

*In the District Court of the Third Judicial District of the State of Nevada, in and for the County of Lander.*

GUY DAVIS, NOAH FAUBERT and GEO. B. THATCHER,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Notice of Application for Removal.**

To the Above-named Plaintiffs and to Their Attorney, Harry C. Price:

You and each of you will please take notice that on Tuesday, the 24th day of November, 1914, at the hour of ten o'clock in the morning of that day, the undersigned will file in the clerk's office of the above-entitled court, the petition, of which a true copy is hereto annexed, for the removal of the above-entitled cause to the District Court of the United States for the District of Nevada and will also then and there file a bond, a true copy of [1*] which is hereto annexed, and at the same time or as soon thereafter as counsel can be heard, will request the removal of said cause to the District Court of the United States in and for the District of Nevada.

Dated at Salt Lake City, Utah, November 4, 1914.

GUSTIN, GALLETTE & BRYANT,
Attorneys for Petitioner, Defendant.

This is to certify: That service of the foregoing

*Page-number appearing at foot of page of original certified Transcript of Record.

notice with a copy of petition, and bond annexed thereto, in the above case and court, was served on the attorney for plaintiffs, Mr. H. C. Price, by mailing said copies to him at his business address, Carson City, Nevada, with the postage thereon prepaid, on Wednesday, the 11th day of November, 1914.

GUSTIN, GALLETTE & BRYANT,
Attorneys for Petitioner, Defendant.
By C. A. GALLETTE.

State of Nevada,
County of Lander,—ss.

I, F. W. Whitburn, County Clerk and clerk of the Third Judicial District Court of the State of Nevada, in and for the County of Lander, do hereby certify that the foregoing is a full, true and correct copy of the Notice of Application for Removal in the case of Guy Davis, Noah Faubert and Geo. B. Thatcher, Plaintiffs, vs. Joseph Ralph, Defendant, as the same appears of record in my office at Austin, Lander County, Nevada.

[Seal] F. W. WHITBURN,
County Clerk and Clerk of the Third Judicial District Court of the State of Nevada in and for the County of Lander.

[Endorsed]: No. 2251. In the Third Judicial District Court of the State of Nevada in and for the County of Lander. Guy Davis, Noah Faubert and Geo. B. Thatcher, Plaintiffs, vs. Joseph Ralph, Defendant. Notice of Application for Removal. Filed November 24, 1914. F. W. Whitburn, Clerk.

No. 1872. U. S. Dist. Court, Dist. Nevada. Filed December 10th, 1914. T. J. Edwards, Clerk. [2]

*In the District Court of the Third Judicial District of the State of Nevada, in and for the County of Lander*

GUY DAVIS, NOAH FAUBERT and GEO. B. THATCHER,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Petition for Removal.**

Comes now the defendant above named and appearing specifically and for the sole and single purpose of presenting this petition, respectfully shows your Honorable Court as follows: 1. That the matter and amount of disputes in the above-entitled action exceeds the value of $3,000, exclusive of interest and costs and that said action is brought in support of an adverse claim filed in the United States Land Office at Elko, Nevada, on or about the 24th day of September, 1914, and that this action was brought in the District Court in and for the Third Judicial District of the State of Nevada in and for the county of Lander and was filed therein on the 30th day of September, 1914; that the title in and to mineral survey No. 4175, Salt Lake No. 3 lode mining claim, is involved in said action. 2. That the controversy in said suit is now and at the time of the commencement of this suit was between citizens of different States and that your petitioner, the defendant in the above-entitled action, was at the time of the commencement of said suit and still is a resident of and a citizen of the city of Salt

Lake in the county of Salt Lake and State of Utah, and a nonresident of the State of Nevada and that the plaintiffs and each of them were then and still are residents and citizens of the State of Nevada. 3. That said action is of a civil nature in which there is a controversy between citizens of the State of Nevada and citizens of the State of Utah; that said suit is now pending, undetermined in the court and that the complaint and summons herein have not been served upon said defendant and that the time has not yet arrived at which said defendant is required by the law of the State of Nevada to answer or plead to the complaint of the plaintiffs and that no application has heretofore been made to any Court or Judge for the Order [3] applied for in this petition. 4. Your petitioner offers herewith a good and sufficient surety for his entering into the District Court of the United States in and for the District of Nevada on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said District Court of the United States in and for the District of Nevada if such Court shall hold that this suit was wrongfully or improperly removed thereto.

And your petitioner prays this Honorable Court to proceed no further herein, except to make the order of removal required by law and to accept said surety and bond and cause the record herein to be removed into said District Court of the United States in and for the District of Nevada.

And your petitioner will ever pray.

JOSEPH RALPH,
Petitioner.

GUSTIN, GALLETTE & BRAYTON,
Attorneys for Petitioner, Defendant. [4]

State of Utah,
County of Salt Lake,—ss.

Joseph Ralph, being first duly sworn, on oath deposes and says that he is above-named petitioner; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge, except as to those matters therein stated upon information and belief and as to those matters he believes it to be true.

JOSEPH RALPH.

Subscribed and sworn to before me this 11th day of November, 1914.

[Notarial Seal] L. *EGGNTIN* CLUFF,
Notary Public.

My Commission expires April 3, 1918.

State of Nevada,
County of Lander,—ss.

I, F. W. Whitburn, County Clerk and clerk of the Third Judicial District Court of the State of Nevada, in and for the County of Lander, do hereby certify that the foregoing is a full true and correct copy of the Petition for Removal in the case of Guy Davis, Noah Faubert, and Geo. B. Thatcher, Plaintiffs, vs. Joseph Ralph, Defendant, as the same appears of record in my office at Austin, Lander County, Nevada.

In Witness Whereof, I have hereunto set my hand and affixed my official court seal this 2d day of December, A. D. 1914.

[Seal] F. W. WHITBURN,
County Clerk and Clerk of the Third Judicial District Court of the State of Nevada in and for the County of Lander.

[Endorsed]: No. 2251. In the Third Judicial District Court of the State of Nevada and for Lander County. Petition for Removal. Guy Davis, Noah Faubert and George B. Thatcher, Plaintiffs, vs. Joseph Ralph, Defendant. Filed November 24, 1914. F. W. Whitburn, Clerk.

No. 1872. U. S. Dist. Court, Dist. Nevada. Filed December 10th, 1914. T. J. Edwards, Clerk. [5]

---

THE AETNA ACCIDENT AND LIABILITY COMPANY, HARTFORD, CONNECTICUT. MORGAN G. BULKELEY, President.

*In the District Court of the Third Judicial District of the State of Nevada, in and for the County of Lander.*

GUY DAVIS, NOAH FAUBERT, and GEO. B. THATCHER,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Bond on Removal.**

KNOW ALL MEN BY THESE PRESENTS, that the Aetna Accident and Liability Company, a corporation duly authorized and existing under and

by virtue of the laws of the State of Connecticut, and having authority to transact business within the State of Nevada, is held and firmly bound unto Guy Davis, Noah Faubert and Geo. B. Thatcher [6] in the sum of five hundred dollars ($500) for the payment of which well and truly to be made unto the said Guy Davis, Noah Faubert and Geo. B. Thatcher, their heirs, executors, administrators and assigns, the said The Aetna Accident and Liability Company binds itself, its successors and assigns, jointly and firmly by these presents, upon condition nevertheless, that

WHEREAS the above-named Guy Davis, Noah Faubert and Geo. B. Thatcher, have heretofore brought a suit of a civil nature in the District Court of the Third Judicial District of the State of Nevada, in and for the county of Lander, against Joseph Ralph, and

WHEREAS, the said Joseph Ralph simultaneously with the filing of this bond intends to file his petition in said suit in such court for the removal of such suit into the District Court of the United States in and for the District of Nevada, which suit is pending in the District Court of the Third Judicial District of the State of Nevada in and for the county of Lander, according to the provisions of the Act of Congress in such case made and provided,—

NOW, THEREFORE, the condition of this obligation is such, that if the said petitioner Joseph Ralph, shall enter in the District Court of the United States in and for the District of Nevada on the first day of its next session, a copy of the record in such

suit and shall well and truly pay all the costs that may be awarded by the said United States District Court, if the said Court shall hold that said suit was wrongfully or improperly removed thereto and shall also appear and enter special bail in such suit, if such bail was originally requisite therein, then the above obligation shall be void, but shall otherwise remain in full force and virtue.

IN WITNESS WHEREOF the said Aetna Accident and Liability Company has caused these presents to be signed and attested and its corporate seal to be hereunto affixed this 7th day of November, A. D. 1914.

THE AETNA ACCIDENT AND LIABILITY COMPANY.

By WESLEY KING,
Resident Vice-President

Attest: CARL T. FREEZE, [Corporate Seal.]
Resident Assistant Secretary [7]

State of Utah,
County of Salt Lake,—ss.

On this 7th day of November, 1914, before me personally came Wesley King, to me known, who being by me duly sworn, did depose and say: That he resides in the city of Salt Lake; that he is resident vice-president of The Aetna Accident and Liability Company, the corporation described in, and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument *in* such corporate seal; that it was so affixed by order of the board of directors of said company; that he signed his name thereto by like

order; that he is acquainted with Carl T. Freeze; that he knows him to be the resident assistant secretary of said company; that the signature of said Carl T. Freeze, subscribed to said instrument, is in the genuine handwriting of said Carl T. Freeze, and was thereto subscribed by like order of said board of directors, and in the presence of him, the said Wesley King.

[Notary Seal] E. C. UPTON,
Notary Public.

My commission expires 12–5–16.

At a regular meeting of the board of directors of The Aetna Accident Liability Company, duly called and held on the 28th day of December, A. D. 1911, the following By-laws were adopted: Article 8 Resident Officers, Attorney in Fact and Agents. Section 1. The President, any Vice-President or the Secretary may from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries, Attorneys in Fact and agents to represent and act for and on behalf of the company, and either the President, any Vice-President, the Secretary or the Board of Directors may at any time remove any such Resident Vice-President, Resident Assistant Secretary, Attorney in Fact or agent, and revoke the power and authority given him.

Section 2. Resident Vice-Presidents may, subject to the provisions and limits named in their certificate of authority, sign and execute on behalf of the Company any and all bonds and undertakings and other writings obligatory in the nature of a bond, and may bind the Company thereby as fully and to the same

extent as the President or any other Officer could bind it; [8] such bonds and undertakings, however, to be attested in every instance by a duly appointed Resident Assistant Secretary. Section 3. Resident Assistant Secretaries may, subject to the provisions and limits named in their certificate of authority, affix the seal of the company to and attest on behalf of the company any and all bonds and undertakings and other writings obligatory in the nature of a bond, and may bind the company thereby as fully and to the same extent as the Secretary or any other officer could bind it; such bonds and undertakings, however, to be signed and executed in every instance by a duly appointed Resident Vice-President. Section 4. Attorney in Fact, subject to the provisions and limits named in their certificate of authority, execute and deliver and attach the seal of the company to any and all bonds and undertakings and other writings obligatory in the nature of a bond on behalf of the company, and any such instrument executed by any Attorney in Fact when attested by any other Attorney in Fact shall be as binding upon the company as if signed, sealed and attested by any officer of the company.

State of Connecticut,
County of Hartford,—ss.

I, Norman C. Steavens, of The Aetna Accident and Liability Company, have compared the foregoing By-law with the original thereof, as recorded in the Minute-book of said company, and do hereby certify that the same is a true and correct transcript therefrom, and of the whole of said original By-law.

Given under my hand and the seal of the Company at Hartford, Conn., this 11th day of February, 1914.

[Corporate Seal] NORMAN C. STEVENS,
Secretary.

State of Nevada,
County of Lander,—ss.

I, F. W. Whitburn, County Clerk and clerk of the Third Judicial District Court of the State of Nevada in and for the County of Lander, do hereby certify that the foregoing is a full, true and correct copy of the Bond in the case of Guy Davis, Noah Faubert and Geo. B. Thatcher, [9] Plaintiffs, vs. Joseph Ralph, Defendant, as the same appears of record in my office at Austin, Lander County, Nevada.

In Witness Whereof I have hereunto set my hand and affixed the official seal this 2d day of December, A. D. 1914.

[Seal] F. W. WHITBURN,
County Clerk and Clerk of the Third Judicial District Court of the State of Nevada, in and for the County of Lander.

[Endorsed]: No. 1872. U. S. Dist. Court, Dist. Nevada. Filed December 10th, 1914. T. J. Edwards, Clerk.

No. 2251. In the Third Judicial Court of the State of Nevada in and for the County of Lander. Aetna Life Insurance Company Casualty Insurance Surety Bonds. The Aetna Accident & Liability Co., Hartford, Conn. $500. On Behalf of Joseph Ralph vs. Guy Davis, Noah Faubert and Geo. B. Thatcher.

Filed November 24, 1914. F. W. Whitburn, Clerk.
[10]

---

*In the District Court of the Third Judicial District of the State of Nevada in and for the County of Lander.*

GUY DAVIS, NOAH FAUBERT and GEO. B. THATCHER,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Order of Removal.**

Upon application of defendant for removal of the above-entitled cause to the District Court of the United States in and for the District of Nevada, and it appearing that the said defendant has heretofore and within his time to answer, filed his petition wherein it appears that the said defendant is a resident and citizen of the State of Utah, and that he has also filed herein his certain bond with the Aetna Accident & Liability Company, a corporation duly authorized to write undertakings of such character within the State of Nevada, and in the proceedings before the United States District Court in and for the District, which said bond is conditioned that the said defendant shall enter in said District Court of the United States within thirty days after the filing of this petition, a copy of the record in this suit, and shall pay all costs that may be awarded by said District Court if it shall hold that this action was wrong-

fully or improperly removed thereto, and it appearing that said diversity of citizenship does exist, and that said bond is a proper one and the surety thereon responsible and no objections to the removal of said cause appearing and good cause appearing therefore,—

Now, therefore, on motion of Gustin, Gallette and Brayton, attorneys for defendant, it is ordered, that the bond heretofore filed and above referred to, be and is hereby approved by the Court, and it is further

Ordered that the proceedings herein be and they are hereby stayed, and that upon application of defendant the record herein be transmitted to the United States District Court in and for the District of Nevada pursuant to the act of Congress in such case made and provided. [11]

Dated this 24th day of November, 1914.

By the Court:

PETER BREEN, District Judge.

Attest: F. W. WHITBURN,

Clerk.

State of Nevada,
County of Lander,—ss.

I, F. W. Whitburn, County Clerk and clerk of the Third Judicial District Court of the State of Nevada, in and for the County of Lander, do hereby certify that the foregoing is a full true and correct copy of the order in the case of Guy Davis, Noah Faubert and Geo. B. Thatcher, Plaintiffs, vs. Joseph Ralph, Defendant, as the same appears of record in my office at Austin, Lander County, Nevada.

In Witness Whereof, I have hereunto set my hand and seal of said court this 2d day of December, A. D. 1914.

[Seal] F. W. WHITBURN,
County Clerk and Clerk of the 3d Judicial District Court of the State of Nevada, in and for Lander County.

[Endorsed]: No. 2251. In the Third Judicial District Court of the State of Nevada in and for the County of Lander. Guy Davis, Noah Faubert and George B. Thatcher, Plaintiffs, vs. Joseph Ralph, Defendant. Order. Filed November 24, 1914, F. W. Whitburn, Clerk.

No. 1873. U. S. Dist. Court, Dist. Nevada. Filed December 10th, 1914. T. J. Edwards, Clerk. [12]

---

*In the District Court of the Third Judicial District of the State of Nevada, in and for the County of Lander.*

No. 1872.

GUY DAVIS, NOAH FAUBERT and GEO. B. THATCHER,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Complaint.**

Plaintiffs complain of defendant, and for cause of action against said defendant allege:

I. That ever since the —— day of September, 1913, plaintiffs and their predecessors in interest

were the owners of and in the actual possession and occupancy of the Guy Davis placer mining claim, 1500 ft. in length by 600 feet in width, said claim being situated in the Battle Mountain Mining District, county of Lander, State of Nevada, and plaintiffs and their predecessors in interest ever since have been and now are the owners of and entitled to the possession of said mining claim.

II. That plaintiffs are the owners of and entitled to the possession of said Guy Davis placer mining claim by virtue of a full compliance with the local laws, rules and customs of miners in said mining district, the laws of the United States and the State of Nevada relative to mining claims, and by actual prior possession, location and discovery thereof by these plaintiffs, their grantors and predecessors in interest.

III. That on or about the 1st day of August, 1914, the defendant wrongfully and without right entered certain portions of said Guy Davis placer mining claim, and on or about said day said defendant filed in the United States Land Office at Elko, Nevada, diagram and field-notes of the Salt Lake No. 3 lode and also the John John and other lodes, and filed therewith an application for patent of the United States for said Salt Lake No. 3 lode, said application being designated as M. A. No. 01544, Min. Sur. No. 4175, and caused the register of said land office to give notice of said application for patent by publication as required by law in the Battle [13] Mountain Scout, a newspaper published in said mining district at Battle Mountain, Nevada, the

first publication thereof being made on the 1st day of August, 1914, and in said application said defendant did apply for patent of all of said Salt Lake No. 3 lode, and more particularly described as follows:

Salt Lake No. 3 Lode. Beginning at Cor. No. 1 whence the S. E. Cor. Sec. 33 Tn. 31 N. R. N. 43 E. M. D M. bears S. 4° 54′ E. 6906 ft.; thence N. 20° 11′ west 1500 ft. to Cor. No. 2; thence N. 69° 44′ E. 591.7 ft. to Cor. No. 3; thence 20° 11′ E. 1500 ft. to Cor. No. 4; thence S. 69° 44′ W. 591.7 ft. to place of beginning.

That by said application for patent and by said wrongful entry aforesaid defendant wrongfully and without right entered said Guy Davis Placer, and practically all *all* of that part of the Guy Davis placer, which is intersected by the exterior lines of said Sur. No. 4175, as shown by plat marked Exhibit "B" filed on the 24th day of September, 1914, in the land office of the United States at Elko, Nevada, with the adverse claim of the defendant against the entry of said Min. Sur. No. 4175, Mineral Application No. 01544, for patent, said ground so intersected being described as follows:

Beginning at Cor. No. 1, Guy Davis Placer. Identical with Cor. No. 1, Sur. No. 4175, Salt Lake No. 3, whence the S. E. Cor. of Sec. 33, T. 31 N., R. 43 E., M. D. B. and M bears S. 4 54′ E. 6906 ft. Thence N. 69 44′ E. 577.00 ft. to Cor. No. 2, Guy Davis Placer. Thence N. 20 11′ W. 1500 ft. to Cor. No. 3, Guy Davis Placer. Thence S. 69 44′ W. 577.00 ft. to Cor. No. 4, Guy Davis Placer. Identical with Cor. No. 2, Sur. No. 4175, Salt Lake No. 3. Thence

S. 20 11′ E. 1500 ft. to Cor. No. 1, the place of beginning. Containing 19.86 acres. All bearings expressed from the true meridian.

IV. That said adverse claim was filed in said land office within the period of sixty days of notice of application for patent on said Salt Lake No. 3 lode. Sur. No. 4175, M. A. No. 01544, and this suit is brought and commenced before the expiration of the period of thirty days after the filing of said adverse claim.

That this suit is brought in support of said adverse claim, and that plaintiffs have necessarily disbursed, expended and paid out the sum of [14] $250 for plats, abstracts and copies of papers filed in said land office with their said adverse claim, and reasonable counsel fees, to wit, $250 for the expense of preparing their said adverse claim.

Wherefore plaintiffs prays judgment against the defendant:

1. For the recovery of possession of said Guy Davis placer claim and for a decree of this court that they are the owners, in the possession of and entitled to the possession of said Guy Davis placer claim.

2. For the sum of $500 damages.

3. For the sum of $500 expended in the preparation of said adverse claim.

GEORGE B. THATCHER,
WM. FORMAN,
HARRY C. PRICE,
Attorneys for Plaintiffs.

State of Nevada,
County of Ormsby,—ss.

Geo. B. Thatcher, being first duly sworn, deposes and says, that he is one of the plaintiffs in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters stated therein upon information and belief, and as to those matters he believes it to be true.

GEO. B. THATCHER.

Subscribed and sworn to before me this 24th day of September, 1914.

JOE JOSEPHS.

[Seal of the Supreme Court of the State of Nevada.]

State of Nevada,
County of Lander,—ss.

I, F. W. Whitburn, County Clerk and clerk of the Third Judicial District Court of the State of Nevada, in and for the County of Lander, do hereby certify that the foregoing is a full, true and complete copy of the complaint in the case of Guy Davis, Noah Faubert and Geo. B. Thatcher, Plaintiffs, vs. Joseph Ralph, Defendant, as the same appears of record in my office at Austin, Lander County, Nevada.

In Witness Whereof, I have hereunto set my hand and seal of said court [15] this 2d day of December, A. D. 1914.

F. W. WHITBURN,
County Clerk and Clerk of the 3d Judicial District Court of the State of Nevada, in and for Lander County.

[Endorsed]: No. 2251. In the Third Judicial District Court of the State of Nevada in and for Lander County. Guy Davis, Noah Faubert and Geo. B. Thatcher, Plaintiffs, vs. Joseph Ralph, Defendant. Complaint. Filed Sept. 30, 1914. F. W. Whitburn, Clerk. Harry C. Price, Attorney for Plaintiffs, Carson City, Nevada.

No. 1872. U. S. Dist. Court, Dist. of Nevada. Filed Decr. 10th, 1914. T. J. Edwards, Clerk.

(Introduced in evidence by plaintiff May 27th, 1915. Plaintiff's Ex. "P." T. J. E.) [16]

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*In the United States District Court in and for the District of Nevada.*

GUY DAVIS, NOAH FAUBERT and GEO. B. THATCHER,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Answer.**

Comes now the defendant and for answer to the complaint of plaintiffs herein admits, denies and alleges:

1. Defendant denies that on the 6th day of September, 1913, or at any other time or at all, the plaintiffs or any of them or their predecessors in interest were at any time or now are the owners of or in actual possession of or entitled to the possession of any portion of the so-called Guy Davis placer mining claim or to any of the ground embraced within the

side lines of the so-called Guy Davis placer mining claim.

2. Defendant denies that the plaintiffs are the owners of or entitled to the possession of the so called Guy Davis placer mining claim, or any of the ground embraced within the side lines of the so called Guy Davis placer mining claim by virtue of a full compliance with local laws, rules or customs of miners in said mining district, or the laws of the United States, or the laws of Nevada relating to mining claims or by actual prior possession location or discovery by plaintiffs, their grantors or predecessors in interest, or any one, or at all.

3. Defendant denies that on the first day of August, 1914, or at any other time, or at all, the defendant or his predecessors in interest, or any one on his behalf, or any one at all, wrongfully and without right entered certain portions of said so called Guy Davis placer mining claim, but defendant admits that on said date defendant filed in the United States Land Office at Elko, Nevada, a diagram and filed notes of the Salt Lake No. 3 lode mining claim and also the John John and other lodes, and filed therewith an application for patent of the United States for the said Salt Lake No. 3 Lode, said application for patent being designated as M. A. No. 01544 Min. Sur. No. 4175 and caused the register of said [17] land office to give notice of said application for patent by publication as required by law in the Battle Mountain Scout, and admits that the first publication thereof was made on the first day of August, 1914, and that said application applied for

all of the ground embraced within the side lines of the Salt Lake No. 3 Lode as set forth in said complaint, but defendant denies that any of the acts were wrongful or without right but on the contrary defendant alleges that all said acts were rightful and in accordance with law. Defendant denies that by said application for patent or by said entry or in any other way, or at all, defendant wrongfully or without right entered upon any of the portion of the so called Guy Davis Placer as set forth in said complaint, or at all, but on the contrary defendant alleges that he is and at all times herein mentioned was the owner of and entitled to the possession of all of the ground described by the so called adverse plat marked Exhibit "B," and filed in the United States Land Office at Elko, Nevada, with the so called adverse claim of the plaintiffs herein to wit:

Beginning at Corner No. 1 Guy Davis Placer, identical with Corner No. 1 Survey No. 4175, Salt Lake No. 3 Lode, whence the southeast corner of Section 33, Twp. 31, N. Range 43 east, M. D. B. and M. bears south 4° 54′ east 6906 feet. Thence North 69° 44′ east 577 feet to Cor. No. 2, Guy Davis Placer. Thence N. 20° 11′ west 1500 feet to corner No. 3. Guy Davis Placer. Thence south 69° 44′ west 577 feet to corner No. 4 Guy Davis Placer. Identical with corner No. 2 Survey No. 4175 Salt Lake No. 3. Thence south 20° 11′ east 1500 feet to corner No. 1 the place of beginning. All bearings expressed from the meridian.

4. That as to whether said adverse claim was filed in said land office within the period of sixty days

of notice of application for patent on said Salt Lake No. 3 Lode and as to whether this suit was brought and commenced before the expiration of the period of thirty days after the filing of said adverse claim, this defendant has not and cannot obtain sufficient information to base a belief and therefore denies and requires that plaintiffs be put to strict proof thereon. Defendant denies that this suit is brought in support of any adverse claim and denies that [18] plaintiffs have necessarily disbursed, expended and paid out the sum of $250.00 or any other sum for plats, abstracts and copies of papers filed in said land office, or at all, and denies that $250, or any other sum, or any sum at all, is a reasonable attorneys fee for the expense of preparing said adverse claim.

5. Defendant denies each and every other allegation in said complaint contained, except what is herein specifically admitted.

As a further defense to said complaint and by way of answer defendant alleges:

1. That the plaintiffs and each of them herein are now and at all times herein mentioned are residents and citizens of the State of Nevada, and the defendant herein is a citizen of the United States, over the age of twenty-one years, and a resident and citizen of the State of Utah.

2. That the amount involved in this suit is over $3,000 exclusive of interest and costs.

3. Defendant alleges that on or about the 2d day of February, 1897, the grantors of this defendant, being citizens of the United States, over the age of

twenty-one years were and ever since said date the defendant and his grantors were and now are the owners, in the actual possession of and entitled to the possession of the Salt Lake No. 3 lode mining claim, 1500 feet in length by 600 feet in width, situate in the Battle Mountain mining district, Lander County, and State of Nevada.

4. Defendant alleges that he has and claims the legal right to occupy and possess said Salt Lake No. 3 lode mining claim and is entitled to the possession thereof by virtue of a full compliance with the local laws, rules and customs of miners in said mining district, the laws of the United States and of said State of Nevada, by pre-emption, purchase and subsequent transfer and by actual prior possession as a lode mining claim located upon the public domain of the United States.

5. Defendant alleges, that the premises sued for in said complaint are parcel of the Salt Lake No. 3 lode mining claim, the property of this defendant.

As a further defense to said complaint and by way of further answer [19] defendant alleges:

1. That the plaintiffs and each of them herein are now and at all times herein mentioned are residents and citizens of the State of Nevada, and the defendant herein is a citizen of the United States, over the age of twenty-one years and a resident and a citizen of the State of Utah.

2. That the amount involved in this suit is over $3,000 exclusive of interest and costs.

3. Defendant alleges that on or about the 2d day of February, 1897, the grantors of this defendant

being then and there citizens of the United States, entered upon the unappropriated public domain of the United States and located the Salt Lake No. 3 lode mining claim, by then and there marking the boundaries of said lode mining claim as required by law, and ever since said date the defendant herein and his grantors have been and until the 5th day of September, 1913, were in the quiet and undisputed possession of said lode mining claim, and during all of said time and for more than sixteen years, said defendant herein and his grantors and predecessors in interest were in the open, notorious, adverse and undisputed possession of said mining claim, holding, working and living upon said lode mining claim. That on or about the 6th day of September, 1913, while said claim was so being held, owned, occupied and possessed by defendant, his grantors and predecessors, and with full knowledge, the plaintiffs and their grantors wrongfully, wholly, without authority entered upon said lode mining claim, without the knowledge or consent of said defendant or his grantors and attempted to locate upon the ground embraced within the said Salt Lake No. 3 lode, the Guy Davis placer claim.

4. That by reason of the premises aforesaid, the defendant herein has become and now is the owner and holder of said premises and the whole thereof, and that the said attempted location of the plaintiffs herein and their grantors was and is wholly void and of no effect. Wherefore defendant prays:

1. That plaintiffs take nothing by their complaint herein.

2. That judgment be rendered defendant for the possession of said Salt Lake No. 3 lode mining claim.

3. For costs of suit. [20]

GUSTIN, GILLETTE & BRAYTON,
Attorneys for Defendant.

State of Utah,
County of Salt Lake,—ss.

Joseph Ralph, being first duly sworn, deposes and says he is the defendant in the above-entitled case; that he has read the foregoing answer and knows the contents thereof; that the same is true except as to those matters therein stated upon information and belief, and as to those matters he believes them to be true.

JOSEPH RALPH.

Subscribed and sworn to before me this 26th day of December, 1914.

[Seal] L. EGGERTSEN CLUFF,
Notary Public.

My commission expires April 3, 1918.

[Endorsed]: No. 1873. U. S. District Court, Dist. of Nevada. Guy Davis et al., v. Joseph Ralph. Answer. Filed January 2d, 1915. T. J. Edwards, Clerk.

(Introduced in evidence by Plff. May 27th. Plffs. Exhibit "S."—T. J. E.) [21]

*In the District Court of the United States, in and for the District of Nevada.*

A.–19.

WILLIAM LAMONT, as Liquidator of Glasgow Western Exploration Company, Ltd., a Corporation,

Plaintiff,

vs.

GUY DAVIS, J. J. HEALEY and MURRAY SCOTT,

Defendants.

A.–20.

WILLIAM LAMONT, as Liquidator of Glasgow Western Exploration Company, Ltd., a Corporation,

Plaintiff,

vs.

GUY DAVIS, NOAH FAUBERT, BERT WILLIAMS, HARRY SHEEHE and R. M. HOPKINS,

Defendants.

**Stipulation as to Trial.**

It is hereby stipulated and agreed by and between the respective parties to the foregoing actions that the opinion and judgment heretofore rendered in the above-entitled actions may be set aside and a rehearing thereof granted, and that upon the entry of the order granting said rehearing said actions

shall remain in that status until the decision or opinion or verdict may be rendered in those certain adverse cases heretofore commenced in the Third Judicial District Court of the State of Nevada, in and for the county of Lander, and removed to this Court, and now on file and pending herein, the title of said cases being:

No. 1873.

J. J. HEALEY, MURRAY SCOTT, WILLIAM FORMAN, and GEO. B. THATCHER,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

and

No. 1872.

GUY DAVIS, NOAH FAUBERT and GEO. B. THATCHER,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

It is further stipulated and agreed that the decision in the above-entitled actions, A–19 and A–20, shall follow and be in accordance with the decision, opinion or verdict in the last-named adverse cases.

It is further stipulated and agreed by and between the parties hereto that the injunctions heretofore issued in the above-entitled cases, A–19 and A–20, shall remain and continue in full force and effect, both parties, plaintiff and defendants being hereby

restrained as heretofore stipulated and ordered by the above-entitled court.

And it is further stipulated that all further liability from and after the date hereof on any bond or undertaking shall be terminated, and from and after the date of this stipulation there shall be no further liability upon any of the bonds or undertakings filed in the above-entitled causes.

It is further stipulated and agreed that the adverse cases herein mentioned shall be tried by the Court with a jury as soon after the fifteenth of February, 1915, as the business and convenience of the Court will permit.

This stipulation is conditioned that the defendant, Joseph Ralph, in the adverse suits will forthwith appear in said adverse suits, and will on or before January 1, 1915, file or cause to be filed his answer to [21a] said adverse complaints aforesaid.

Dated this 23d day of December, A. D. 1914.

GEO. B. THATCHER,
WM. FORMAN and
H. C. PRICE,
Attorneys for Plaintiff.

GUSTIN, GILLETTE & BRAYTON,
Attorneys for Defendant.

[Endorsed]: Nos. A.-19, 20. U. S. District Court, Dist. Nevada. Wm. Lamont, as Liquidator, vs. Guy Davis et al. Stipulation. (Introduced by Plaintiffs on Motion for New Trial, August 24th, 1915.)

Filed January 14, 1915. T. J. Edwards, Clerk. By H. D. Edwards, Deputy. [21b]

*In the District Court of the United States for the District of Nevada.*

GUY DAVIS, NOAH FAUBERT and GEO. B. THATCHER,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Reply.**

Come now the plaintiffs, and for reply to defendant's answer in the above-entitled action, admit, deny and allege as follows:

I. Answering paragraph 3 of the first affirmative defense set forth and contained in said answer, plaintiffs specifically deny each and every all and singular the allegations therein contained.

II. Answering paragraph 4 of the first affirmative defense set forth and contained in said answer, plaintiffs specifically deny each and every [22] allegation, all and singular, therein contained.

III. Answering paragraph 5 of the first affirmative defense set forth and contained in said answer, plaintiffs specifically deny each and every all and singular the allegations therein contained.

IV. Answering paragraph 3 of defendant's second affirmative defense contained in said answer, plaintiffs specifically deny each and every all and singular the allegations contained in said paragraph.

V. Answering paragraph 4 of defendant's second affirmative defense contained in said answer, plain-

tiffs specifically deny each and every all and singular the allegations contained in said paragraph.

VI. Wherefore plaintiffs pray for judgment in their favor and for costs of suit.

GEO. B. THATCHER,
WM. FORMAN and
H. C. PRICE,
Attorneys for Plaintiffs.

State of Nevada,
County of Ormsby,—ss.

Geo. B. Thatcher, being first duly sworn, deposes and says, that he is one of the plaintiffs in the above-entitled action; that he has read the foregoing reply to defendant's answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated upon information or belief, and as to those matters he believes it to be true.

GEORGE B. THATCHER.

Subscribed and sworn to before me this 25th day of January, 1915.

[Seal] JOHN J. MULLIN,
Notary Public.

[Endorsed]: No. 1872. In the District Court of the United States for the District of Nevada. Guy Davis, Noah Faubert, and Geo. B. Thatcher, Plaintiffs, vs. Joseph Ralph, Defendant. Reply. Filed January 25th, 1915. T. J. Edwards, Clerk. Geo. B. Thatcher, Attorney for Plaintiffs, Carson City, Nevada. [23]

*In the District Court of the United States in and for the District of Nevada.*

No. 1872.

Involving Adverse of the Guy Davis Placer Against Salt Lake No. 3 Lode Mining Claim.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER, and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Verdict.**

We, the Jury, find a general verdict for the plaintiffs.

J. G. KAUFMAN,
Foreman.

Dated June 2d, 1915. [24]

*In the District Court of the United States for the District of Nevada.*

No. 1872.

Involving Adverse of the Guy Davis Placer Against Salt Lake No. 3 Lode Mining Claim.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER, and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Special Verdict.**

Was there a valid discovery of a lode within the limits of the Salt Lake No. 3, made by the defendant or his grantors prior to the date when the Guy Davis placer is alleged to have been located? Answer: No.

J. G. KAUFMAN,
Foreman.

Dated June 2d, 1915.

[Endorsed]: No. 1873. U. S. District Court, Dist. of Nevada. Geo. A. Cole et al. vs. Joseph Ralph. Verdicts—General and Special. Filed June 2d, 1915. T. J. Edwards, Clerk.

*In the District Court of the United States for the District of Nevada.*

No. 1872.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER, and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Judgment.**

This case coming on regularly for trial on Tuesday, the 25th day of May, A. D. 1915, before the Court with a jury, the jury having been regularly impaneled, and the case having been regularly heard, and testimony of the witnesses on behalf of plaintiffs and defendant having been regularly given, and oral and documentary evidence having been regularly introduced on behalf of plaintiffs and defendant, and the plaintiffs being represented by their attorneys, Geo. B. Thatcher, William Forman, and H. C. Price, and the defendant being represented by his attorneys, George Springmeyer and P. G. Ellis, and the cause having been regularly tried and [25] submitted to the jury, and the jury having found a general verdict for the plaintiffs, and the jury further having found a special verdict that there was no valid discovery of a lode within the limits of the Salt Lake No. 3 made by the de-

fendant or his grantors prior to the entry of the plaintiffs and their grantors in the location of the Guy Davis Placer, and such verdicts of the jury having been rendered on June 2, A. D. 1915, and duly and regularly recorded and filed in said court on said June 2, 1915,—Now, therefore, it is ordered, adjudged and decreed that plaintiffs have and recover possession of said Guy Davis placer and the whole thereof, being described as follows, to wit: Beginning at Cor. No. 1, Guy Davis placer, identical with Cor. No. 1, Sur. No. 4175, Salt Lake No. 3. Whence the S. E. Cor. of Sec. 33, T. 31 N., R. 43 E., M. D. B. and M. bears S. 4 54′ E. 6906 ft. Thence N. 69 44′ E. 577.00 ft. to Cor. No. 2, Guy Davis placer. Thence N. 20 11′ W. 1500 ft. to Cor. No. 3, Guy Davis placer. Thence S. 69 44′ W. 577.00 ft. to Cor. No. 4, Guy Davis placer. Identical with Cor. No. 2, Sur. No. 4175 Salt Lake No. 3. Thence S. 20 11′ E. 1500 ft. to Cor. No. 1, the place of beginning. Containing 19.86 acres. All bearings expressed from the true meridian; and

It is hereby further adjudged and decreed that plaintiffs are the owners, in the possession and entitled to the possession of said Guy Davis placer.

It is further adjudged and decreed that plaintiffs have judgment for their costs herein expended in the amount of $59.

Dated this 3d day of June, A. D. 1915.

T. J. EDWARDS,
Clerk of the District Court of the United States, for the District of Nevada.

[Endorsed]: No. 1872. In the District Court of the United States for the District of Nevada. George A. Cole, Ed. Malley, Gilbert C. Ross, J. J. Healey, Guy Davis, George B. Thatcher and William Forman, Plaintiffs, vs. Joseph Ralph, Defendant. Judgment. Filed June 3d, 1915. T. J. Edwards, Clerk. Geo. B. Thatcher, William Forman, H. C. Price, Attorneys for Plaintiffs, Carson City, Nevada. [26]

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*In the District Court of the United States for the District of Nevada.*

No. 1872.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER, and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Notice of Motion to Stay Proceedings Pending Motion for New Trial.**

To the Plaintiffs Above Named, and Messrs. George B. Thatcher and William Forman, Their Attorneys:

You and each of you will please take notice that on Monday, June 7th, 1915, at the hour of ten o'clock A. M., or as soon thereafter as counsel can be heard, at the courtroom of the above-entitled Court in Carson City, Nevada, the defendant will move the Court for an order to stay execution of the judgment ren-

dered in the above-entitled action, and to fix and prescribe such security or undertaking as the law authorizes, and as the Court may be advised in that behalf, pending the filing, hearing and disposition of defendant's motion for a new trial.

GEORGE SPRINGMEYER,
P. G. ELLIS,
Attorneys for Defendant.

Received service of copy of foregoing notice on this June 3, 1915, at Carson City, Nevada. Waiving time.

GEO. B. THATCHER,
Attorney for Plaintiff. [27]

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*In the District Court of the United States for the District of Nevada.*

No. 1872.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER, and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Notice of Motion for New Trial.**

To the Plaintiffs Above Named, and to Messrs. George B. Thatcher and William Forman, Their Attorneys:

You and each of you will please take notice that on Monday, June 7, 1916, at the hour of ten o'clock A. M., or as soon thereafter as counsel can be heard,

at the courtroom of the above-entitled court in Carson City, Nevada, the defendant will move the Court for an order setting aside the general and special verdicts herein, and also the judgment entered herein, and granting the defendant a new trial, upon the grounds and for the reasons stated in the attached and hereto annexed motion, which is hereby expressly referred to and made part of this notice.

Said motion will be made and based on the minutes of the court, on the reporter's notes, and upon all the records, pleadings, and files herein, and the exhibits and documents in the evidence herein, and upon all the evidence introduced at the trial.

GEO. SPRINGMEYER,
P. G. ELLIS,
Attorneys for Defendant.

Received service of the above notice on this 3d day of June, A. D. 1915, at Carson City, Nevada; waiving time.

GEO. B. THATCHER,
Attorney for Plaintiff. [28]

*In the District Court of the United States for the District of Nevada.*

No. 1872.

Involving Adverse of the Homestake Placer Against the Midas and the Evening Star Lode Mining Claims.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER, and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Motion for New Trial.**

Comes now the defendant above named, and by leave of Court files this its motion for a new trial, and moves and petitions the Court for an Order setting aside the verdict of the jury herein, and also the judgment of the Court thereon, and granting a new trial to the defendant herein, for the reason that manifest errors occurred at and during said trial, to the material and manifold injury and prejudice of the defendant, and especially in this, to wit:

1. That the complaint does state facts sufficient to constitute a cause of action in favor of the plaintiffs against the defendant, nor a ground of adverse, and does not state facts sufficient to entitle them to any verdict, judgment or relief herein. That said complaint does not state facts sufficient to have war-

ranted the reception of any evidence in their favor herein.

2. The evidence herein is insufficient to sustain the verdict and is insufficient to sustain the judgment in their favor, or any verdict or judgment.

3. The verdict is against the weight of the evidence.

4. The evidence shows that the plaintiffs are entitled to no judgment or relief, and that they are not entitled to the verdict returned by the jury, or to the judgment of the Court.

5. The Court erred in admitting incompetent, irrelevant, immaterial and inadmissible testimony offered and introduced by the plaintiffs, prejudicially affecting the defendant's rights and producing the adverse judgment against him herein.

6. The Court erred in refusing and rejecting material, competent, relevant [29] and legally admissible evidence offered by the defendant herein, to his prejudice and injury herein.

7. The evidence of the plaintiffs showed that there has been a misjoinder of parties plaintiff herein, in that some of the present plaintiffs to this action have no interest in the subject matter of this action, or that none of them have any such interest; (2) that some of the present plaintiffs are not parties or privies in interest to any of the parties to the adverse filed in the U. S. Land Office, in support of which this action was brought or begun. (3) That some of the present parties plaintiff have no interest acquired from any of the original adversing plaintiffs or acquired since this action was begun.

(4) That none of the present parties in interest are parties or privies to or with the original adversing plaintiffs.

And that none of the parties plaintiff can recover in this action under the evidence introduced by plaintiffs, nor under all the evidence.

8. That there is a defect of necessary parties plaintiff first disclosed by plaintiffs' evidence herein.

9. The Court erred in overruling the defendant's motion for a nonsuit at the close of the plaintiffs' evidence.

10. The Court erred in admitting and receiving any evidence on behalf of the plaintiffs, over defendant's objection, for the reason that the complaint herein did not and does not state facts sufficient to constitute a cause of action.

11. The Court erred in permitting the plaintiffs to attack the lode mining claims of the defendant, in their case in chief, or at all, under the allegations of the complaint, either by evidence of the nonexistence of lodes or veins bearing mineral, in place, therein, or otherwise, or at all.

12. The averments of the complaint are insufficient to admit any evidence at all by the plaintiffs, tending either to invalidate the lode mining claims of the defendant, or in support of their own claims of placer mining locations.

13. The Court erred in its general instructions to the jury, in charging that a lode or vein must carry such values as to justify a reasonably prudent man in expending his time and money in the effort to develop the same, or the mining claim, as applied to the

facts and evidence before the Court and jury, and that such rule is applicable in law to the facts in this record, because [30] the facts and circumstances upon which the locator and subsequent owners acted in each instance, with regard to the improvement, developing and prospecting of the Midas and the Evening Star mining claims, and not and were not before the jury or the Court, so as to enable the jury to weigh their acts, and say whether they acted with reasonable prudence or not, at the time of location, or any subsequent time.

14. The Court erred in instructing the jury that if one discovers a vein or lode carrying sufficient values to meet the law's requirements, and to have sustained a location, but that if the locator did not know that it carried such values, there was no discovery, for that such instruction is inapplicable to the evidence; and there was no showing that the presence of values answering to the law's requirements was unknown to the locator, owner or discoverer or finder of such lode or vein at the time of its exposure, or at a subsequent time, preceding the attempted location of the Homestake placer mining claim.

15. The Court erred in giving each one of the two above mentioned instructions to the jury, for that the same were incorrect statements of the law, and are not the correct rule of law, under the Statutes of the United States, and the State of Nevada, and the decisions of the courts of last resort.

16. The Court erred in refusing to give each of the special instructions to the jury, requested and offered in writing by the defendant at the trial and

for a separate error in refusing each one of said instructions, for the reason that each of said instructions contained a correct statement of the law upon the facts in evidence, to which the same were respectively directed and which were not covered by other instructions within the general charge of the Court, whereby defendant was greatly injured and prejudiced.

17. The Court erred in giving the special instructions requested by the plaintiffs, because the same were incorrect expressions of the law, and were not the law, because further the same were not captioned in this or in any case, were not signed by the plaintiffs' counsel, or by anyone, and not numbered, so as to identify or refer to any particular part thereof, and which incorrect propositions were embodied by the Court in its charge to the jury.

18. Because the Court refused defendant's requests for the submission to [31] the jury of special verdicts, as shown by the record, at the time of the request for special instructions to the jury.

19. Because the Court refused to instruct the jury upon the law governing adverse possession, which issue was presented by defendant's answer, and supported by his evidence, and the Court refused defendant's special request for such instructions, which correctly expressed the law on that subject.

20. Because the Court erred in overruling defendant's motion to strike out the plaintiffs' evidence as to the nonexistence of lodes or veins, or mineral-bearing rock in place, in the Midas and the Evening Star lode mining claims.

21. Because the Court admitted in evidence over defendant's objection deeds for the Homestake placer mining claim, which were not properly stamped with U. S. Int. Revenue stamps required by the War Revenue Act of Congress 1914, become effective Dec. 1, 1914.

GEORGE SPRINGMEYER,
P. G. ELLIS,
Attorneys for Defendant.

[Endorsed]: No. 1872. U. S. District Court, District of Nevada. Geo. A. Cole et al. v. Joseph Ralph. Motion to Stay Proceedings. Motion for New Trial and Notice of Mo. for New Trial. Filed June 3d, 1915, T. J. Edwards, Clerk. [32]

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*In the District Court of the United States in and for the District of Nevada.*

No. 1872.

In Re HOMESTAKE PLACER,

vs.

THE MIDAS AND EVE. STAR LODES.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER, and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Assignments and Specifications of Error or Memorandum of Exceptions.**

Comes now Joseph Ralph, above named, and for Assignments and Specifications of Error, says that the Court committed manifest and prejudicial errors upon the trial of this action, and specifies the following errors occurring at the trial, and duly objected to by him, to wit:

I. The Court erred in permitting the introduction of any evidence on the part of the plaintiffs, on the ground that the complaint does not state facts sufficient to constitute a cause of action against the defendant, and for the following reasons:

1. The complaint does not allege that at the time of the making of the Homestake placer location by plaintiffs or their grantors, the ground covered thereby or included therein, was (a) open or vacant; (b) unoccupied; (c) unappropriated; (d) mineral; (e) if mineral whether lode or placer in character; (f) public lands of the United States.

2. Because the Court had no jurisdiction as between a lode and placer claimant, to determine the mineral or nonmineral character of the ground in controversy herein, under the averments of the complaint.

3. Because the complaint does not allege any ouster, wrongful or otherwise, of the plaintiffs from said premises by the defendant.

4. The complaint does not allege that the defendant, at the time this suit was begun, or at all, was de-

taining the said premises from the plaintiffs, wrongfully or at all.

5. The complaint does not allege whether the plaintiffs or their grantors were at the time of the beginning of this action in the possession of the said premises in dispute, or whether either or neither of the parties plaintiffs or defendant were then in possession thereof. [33]

6. Because the complaint alleged no adverse filed in the U. S. Land Office, where said premises are situate, by the present plaintiffs or their grantors.

7. Because the complaint alleges no facts or grounds for relief of any nature against the defendant.

Before any evidence was introduced by the plaintiffs, the defendant at the trial objected to the introduction of any evidence by the plaintiffs on the said ground, and the objection was overruled by the Court, to which ruling defendant excepted, and said ruling is now assigned as error (p. 4).

II.

The Court erred in overruling defendant's motion for a nonsuit made at the close of the plaintiffs' evidence in chief (pp. 267–271), and the defendant specifies the following grounds and particulars of error in said order, viz:

1. The plaintiffs' complaint does not state facts sufficient to constitute a cause of action, or cause for adverse, and the defendant specifies that the said complaint was insufficient in each, and all and every of the particulars wherein defendant has specified under Assignment No. 1, that the said complaint is

insufficient to state a cause of action.

2. Because no sufficient facts were proved by the plaintiffs in their said cause in chief, to entitle them to any verdict or judgment in their favor, or to entitle them to go to the jury,—their proof showing affirmatively that they are not entitled to such verdict, judgment or relief. And defendant specifies the following particulars of such insufficiency of plaintiffs' evidence.

(a) Said evidence does not establish or sustain that at the time of making the Homestake placer location, the ground included therein was open or vacant, unoccupied, unappropriated public mineral land of the United States. [34]

(b) Said evidence shows affirmatively that said ground was not vacant, unappropriated public land of the United States at said time.

(c) Said evidence shows affirmatively that at the time of making of said Homestake placer location, the ground included therein was held and occupied by the defendant's grantors under the Midas, the Evening Star, and the Salt Lake No. 3 lode mining location.

(d) Said evidence shows affirmatively that at the time of the attempted location of the alleged Homestake placer, the greater portion of the ground was covered by the prior existing locations of the defendant's grantors, known as the Salt Lake No. 3, Midas, and the Evening Star mining claims, which lode claims are contiguous to each other and to the other claims of a group of about 20 claims, that said Salt Lake No. 3 and other claims of said group were im-

proved with valuable buildings, roadways, mill, leaching plant, and dwelling houses, in one or more of which houses resided the agent and employee or employees of defendant's grantors, in possession of all of said ground including said ground sought to be taken under the greater part of said Homestake location aforesaid; that said Midas, Evening Star and Salt Lake No. 3 lode claims, and the adjacent claims of said group had all and each extensive workings, tunnels, adits, shafts, drifts and upraises, many thereof intended for working all of said claims as a group, and some of said workings for the special development of said three lode claims sought to be appropriated by and under the Homestake locations; and that the attempted Homestake locators had knowledge of all the foregoing when attempting said conflicting location.

(e) Said evidence shows affirmatively that when said Homestake locators went upon the ground to attempt such location, they saw and knew of the boundary stakes of said Salt Lake No. 3, Midas and Evening Star locations, knew of all said improvements, houses, excavations, etc., set out under the preceding paragraph hereof, and the presence and supervision on the Salt Lake No. 3 of said agent and employee of the Glasgow Western Co., owner of said premises and without his knowledge or consent, or that of said owner, set down their stakes, so as to claim a great part of said three claims within the attempted Homestake location. [35]

(f) Said evidence shows that said locators had been enjoined by court process concerning their pre-

vious unlawful entries upon said premises by underground tunnelling and otherwise, into the Salt Lake No. 3, Midas and Evening Star, or a portion of said grounds, and shortly prior to the alleged Homestake location.

(g) Said evidence shows that the Homestake locators in attempting to make said location, knowingly and willfully invaded the prior actual possession of defendant's grantors, without their knowledge or consent.

(h) Said evidence does not show, sustain or establish that the defendant ever wrongfully or at all ousted the plaintiffs or their grantors from the possession of said ground, since Sept. 8, 1913, or at all.

(i) Said evidence shows that said pretended locators and their grantees were never in possession of the said ground or any part thereof, but that some of them made transient, unlawful and secret intrusions thereon without defendant's knowledge or consent.

(j) Said evidence does not sustain or show that at the time this suit was begun, the defendant was unlawfully or wrongfully detaining the said ground from the original plaintiffs, or the present plaintiffs. There is no such evidence.

(k) Said evidence shows that when this suit was begun, the original plaintiffs were not in the possession of the said ground.

(l) Said evidence shows that the original plaintiffs were never the owners of or entitled to the possession of the ground claimed by them as placer,

(m) That they were not such owners or entitled

at the time this suit was begun.

(n) Said evidence does not show that the present plaintiffs were at the time of their substitution as plaintiffs, the owners of or entitled to the possession of said ground claimed as a placer

(o) Said evidence shows that some of the present plaintiffs were not represented in any adverse filed in the land office of the proper district, in person or by their grantors.

(p) Said evidence shows that some of the present plaintiffs have no interest in the subject of the action, or in the alleged placer claim. [36]

(q) Said evidence shows there is no joint or common right of action in all of the plaintiffs.

(r) Because there was no evidence by plaintiffs in chief, sufficient in any degree to invalidate said Midas, Evening Star, or Salt Lake No. 3 lode mining claims.

(s) Because there was no evidence by plaintiffs sufficient in any degree to meet or repel the *prima facie* presumptions arising from the prior possession of said ground by the defendant's grantors, at the time of said attempted placer location.

(t) Because there was no evidence by plaintiffs sufficient in any degree to support a finding of no discovery of a lode or vein in said Midas lode mining claim, prior to the attempted Homestake location.

(u) Because there was no evidence by plaintiffs sufficient in any degree to support a finding of no discovery of a lode or vein in said Evening Star lode mining claim, prior to the attempted Homestake location.

(v) Because no adverse was filed in the land office for the premises sought to be recovered herein.

(w) Because the description in the adverse placed in evidence is too indefinite, and does not describe any premises nor sustain the averments of the complaint.

3. Because the plaintiffs' evidence showed a fatal misjoinder of parties plaintiff in this action, and defendant specifies the followng partculars of such misjoinder.

(a) Some of the present plaintiffs had no interest in the subject matter of the action at the time the suit was begun, and have not since acquired any such interest from one of the original plaintiffs, who at said time had such interest.

(b) Some of the present plaintiffs are not represented in any adverse heretofore filed in the proper land office, and so have no right of action.

(c) Because as to any appearance of interest in the Homestake location as recorded, a portion only of the plaintiffs have an interest therein.

4. Because the case made does not support the alleged adverse as alleged in the complaint to have been filed in the land office. [37]

5. Because there is a variance between plaintiffs' complaint and their proof, in this:

(a) The complaint alleges a joint or common right of action, and a common interest in the subject matter of the action; while the proof shows that a portion only of the plaintiffs trace any interest or claim to and through the original locators of the

Homestake, and through the parties filing the adverse.

Upon the order by the Court overruling defendant's motion for said nonsuit, the defendant then and there excepted, and which ruling the defendant now assigns as error. (pp. 268–271.)

III.

The whole evidence was and is insufficient to sustain the general verdict of the jury, and defendant specifies the following particulars of such insufficiency.

(a) The evidence was insufficient in each and all and every of the particulars wherein it is specified that the plaintiffs' evidence in chief, was insufficient, under Assignment No. 2 of Errors, and in addition thereto, as follows:

(b) The evidence shows affirmatively and without conflict that at the time of making the alleged Homestake placer location, and ever since the 27th day of March, A. D. 1907, the greater part thereof, and all thereof alleged to be in conflict with defendant's lode application, was in the open, notorious, peaceful, undisputed and exclusive possession and occupancy of the defendant's grantors claiming the same adversely, and holding and working the same in the usual way in the vicinity thereof, under the Midas and Evening Star lode location.

(c) The evidence shows, without conflict, that during such occupancy for over six years prior to the alleged Homestake location, the defendant's grantors had improved the said ground, and the adjoining ground under the Midas, the Evening Star, the

Salt Lake No. 3 and other lode locations, by the construction of valuable buildings, worth many thousands of dollars, and excavations, roadways, leaching plant, mill, bunk-houses and dwelling-houses. [38]

(d) The evidence shows without conflict that the said Midas, Evening Star, and Salt Lake No. 3 lode mining claims were three of a group of about twenty lode claims, of which thirteen other claims were in process of application for patent, with the said three named lode claims, at the time of the filing of this adverse, and that said claims had always been worked and operated as a group of claims with improvements, excavations, etc., designed and tending to benefit the whole of said group. That in developing said group, one tunnel a thousand feet long had been driven, another several hundred feet long, with various shafts, drifts and upraises in different parts of said group of claims, and with a mill and leaching plant for the treatment of ores taken from said workings, which improvements were situate largely on said Salt Lake No. 3 lode claim; that in the construction of said buildings, mill, leaching plant, the roadways, tunnels, adits, drifts, shafts and upraises, vastly over $100,000 had been expended. That the locators of said Homestake claim had knowledge of all the foregoing, and entered upon said premises for the purpose of invading defendant's possession of the ground, and of appropriating to their own use the defendant's said property.

(e) The evidence shows affirmatively and without conflict, that at the time the locators of said alleged

Homestake claim, entered upon the ground to make such location, they saw and knew of the stakes and boundary monuments of the Midas, the Evening Star and Salt Lake No. 3 lode mining claims on the ground; saw and knew of all the buildings, excavations and roadways constructed thereon and upon the adjoining mining claims by the defendant's grantors; knew Joseph Jurey, the agent of said grantors, and knew that he was such agent, and was then and there residing in one of the houses upon said Salt Lake No. 3, and had charge and custody of all said mining claims for the owner thereof; and that they then and there, without the knowledge or consent of said owner of said lode claims, or of said Jurey, their agent and employee, set down their stakes for the attempted relocation of said ground, or a great portion thereof, upon and across the said Midas, the Evening Star and Salt Lake No. 3 lode claims, and thereby attempted to relocate, or to locate said ground included therein as the Homestake placer mining claim.

(f) The evidence shows without conflict, that a short while prior to the attempted location of said portions of the Midas, the Evening Star and the [39] Salt Lake No. 3 lode claims ground by the plaintiffs' grantors, as the Homestake placer, the defendant had excavated and found alluvial or placer gold in the gulch within the limits of each of the said three named lode claims, and that the locators of said Homestake placer had obtained knowledge or information thereof, and had tunneled into said ground from the adjoining public land, or claims, had unlawfully taken therefrom some gold deposits of great

value, had been enjoined therefrom, violated the injunction, and punished for contempt by imprisonment; and thereafter they sought to "jump" or relocate the said ground as the Homestake claim, and thereby to unlawfully appropriate said deposits, and that they instituted this suit in support of such attempted claim jumping.

(g) There was no evidence to meet or repel the evidence of continuous adverse possession of said ground by defendant and his grantors for more than the period of limitations, and since Feb. 2, 1897, under the said Salt Lake No. 3 lode claim, and since Mar. 27, 1907, under the portions thereof within the Midas and Evening Star lode claims, whereby the title and right to possession and patent for said Salt Lake No. 3, Midas, and Evening Star lode mining claims, became and was vested in defendant's grantors, and through them in the defendant.

(h) Because under the complaint herein this action was not begun for the purpose of supporting any adverse as against the portion of the Homestake placer included within the boundaries of the Salt Lake No. 3 lode mining claim.

(i) Because there was no evidence tending or sufficient in any degree to establish that there had been no discovery of a lode or vein within the limits of said Salt Lake No. 3, at or since its location on Feb. 2, 1897, and prior to the alleged Homestake claim on Sept. 5, 1913.

(j) Because there was no evidence tending or sufficient in any degree to establish that there had been no discovery of a lode or vein within the limits

of said Midas or the Evening Star lode claims, at or since their location on Mar. 27, 1907, and prior to the alleged Homestake claim on Sept. 8, 1913.

(k) Because the defendant was protected from any such inquiry as to prior discovery upon said Salt Lake No. 3, the Midas and the Evening Star mining claims, by the statute of limitations, being Sec. 4951 and subsequent related sections of the Nevada Comp. Laws, 1912, Sec. 2332 of the U. S. Rev. [40] Statutes, and the decisions of the Courts construing them.

(l) Because plaintiffs' evidence is incongruous, shifting and contradictory in this: That whereas, by their evidence they assert a pretended placer location upon unoccupied, unappropriated public land, said evidence also discloses this is untrue, and that said ground was occupied and highly improved at the time of such attempted location by them.

(m) There is a variance between plaintiffs' pleading and proof as to the nature of the right, title or interest of the several plaintiffs.

(n) Some of the plaintiffs have no interest in the alleged Homestake placer claim, nor in any adverse filed therefor.

(o) Because any and all placer values within said Salt Lake No. 3, Midas and Evening Star lode claims belong to the defendant under his said lode claims and are and were not the subject for entry, discovery, appropriation by the plaintiffs or any one else.

The defendant duly excepted to said verdict at the time (p. ——).

IV.

The evidence is insufficient to sustain or support

the special verdict of the jury as to the Midas lode mining claim, in these particulars:

(a) The evidence does not sustain or establish in any degree that there had not been discovered within the limits of said Midas lode mining claim, between its location on Mar. 27, 1907, and the alleged location of the Homestake placer claim on Sept. 8, 1913, any lode or vein of mineral-bearing rock in place sufficient to sustain said location as a valid mining location.

(b) The evidence does not establish as a fact that there had been no such prior discovery on said Midas lode claim before Sept. 8, 1913.

(c) Such inquiry as to prior discovery was barred by limitations of law, and by virtue of defendant's title and right of possession of the ground, under said Midas lode mining claim acquired by the adverse possession, holding and working of said ground by his grantors for more than the period of limitations before the attempted Homestake placer location.

The defendant duly excepted to said verdict at the time of its return by the jury. [41]

V.

The evidence is insufficient to support or sustain the special verdict of the jury as to the Evening Star lode mining claim, in these particulars:

The said evidence is insufficient to support said special verdict in each and every and all of the particulars wherein it is specified that the evidence is insufficient to sustain the special verdict as to the Midas lode claim, as set out and specified under Assignment IV, as above.

VI.

The Court erred in receiving the said verdicts general and special, as between the Homestake placer and the Midas and the Evening Star lode mining claims, and in treating the same as establishing the facts, or as controlling the judgment of the Court, and the defendant specifies as grounds hereof, that the evidence was and is insufficient to sustain the said verdicts, and each thereof, and was contrary to said verdicts, in each of the ways and particulars wherein it is specified that the same was insufficient under Assignments Nos. II, III, IV, and V herein. The said verdicts are insufficient in form and substance, and cannot found or sustain any judgment in favor of the plaintiffs.

The defendant duly excepted to said verdicts when the same was returned into court by the jury, and the same is now assigned as error.

VII.

The Court erred in rendering and entering up judgment against the defendant in favor of the plaintiffs, upon said verdicts of the jury, or at all, for the reason that the evidence was and is insufficient to sustain or uphold the said verdicts, general and special, or either thereof. And the defendant specifies hereunder:

1. That the evidence was and is insufficient in each, all, and every individual respect and instance, wherein it has been hereinbefore specified that the evidence was and is insufficient under Assignments of Error Nos. II, III, IV herein.

And defendant specifies severally and separately

each one of said asserted instances of insufficiency as set out and specified, to the same extent, purpose and effect as if the same were here repeated at length. [42]

2. And further because the plaintiffs' complaint herein does not state facts sufficient to constitute a cause of action, and defendant specifies each and several of the particulars of such insufficiency as set out and specified in that behalf, under Assignment No. I herein.

3. And further because the plaintiffs' evidence, and all the evidence, shows there was and is an unlawful misjoinder of parties plaintiff to this action, as shown and specified under Assignments Nos. II and III herein, in each particular therein mentioned.

4. And further, because there is a variance between the pleadings and proof of the plaintiffs respecting the nature of their rights and interests in the alleged Homestake placer claim, respecting which this suit was brought in each of the ways specified under Assignments Nos. II and III herein.

5. Said judgment is insufficient and not determinative of the issues, either in form or substance.

The defendant duly excepted to said judgment and the rendition and entry thereof, and the same is now assigned as error.

VIII.

The verdicts of the jury, and the judgment of the Court, are each and severally against the law, and defendant specifies that the same are against law:

1. In each of the particulars wherein it is hereinbefore specified that the evidence is insufficient to

sustain said verdicts and judgment under Assignments II, III and IV.

2. Because the complaint was and is insufficient in its statements of fact to constitute a cause of action, in each of the particulars set out and shown under Assignment No. I herein.

3. Because the evidence shows an illegal misjoinder of parties plaintiff herein, in each of the particulars specified under Assignments II and III herein.

4. Because the proof shows a variance between plaintiffs' complaint and proofs respecting the nature of the right, title or cause of action respecting which this suit was brought.

Said verdicts and judgment were duly excepted to by defendant at the time thereof. [43]

IX.

The Court erred in permitting the plaintiffs, over defendant's objection, to amend their complaint at the trial, by striking out the word "Defendant" and inserting "Plaintiffs" in place thereof, in paragraph 3 of said complaint.

There was no showing in support of such application to amend, and it was too late to so amend, over defendant's objection.

X.

The Court erred in admitting incompetent, irrelevant, immaterial, improper and inadmissible testimony and evidence by and on behalf of the plaintiffs, against the objections of defendant, and prejudicial to him, as now to be shown and specified.

1. During the trial of said action, and before any

evidence by the plaintiffs, as to the location of the Homestake placer, the defendant objected to the introduction of any evidence pertaining to the location of placer claims by the plaintiff, or the discovery of mineral upon any such placer claims, until a proper foundation has been laid, and until it is first shown that the ground was at the time unoccupied and unappropriated public land.

The COURT.—If he fails to make that proof, his testimony will be stricken out, but I will allow him to prove his case in his own way.

Mr. SPRINGMEYER (For Defendant).—We take exception on the grounds stated in the objection, and to all that line of testimony, so it will not be necessary to repeat the objection. Said ruling is now assigned for error..

2. During said trial the Court permitted plaintiffs' witnesses, over said objection of defendant, to proceed with their evidence and without showing the unoccupied or unappropriated character of the ground, but affirmatively showing the contrary, allowed said witnesses to testify notwithstanding that they entered upon the ground in question, made a discovery and the location of the Homestake placer, by monumenting, posting of notices and recording location certificate, and other steps looking to make a location of said Homestake placer, upon portions of the ground embraced within the Salt Lake No. 3, Midas and Evening Star lode mining claims belonging to the defendant's grantors. (pp. ——.) [44]

Plaintiffs' witnesses further testifiyng that the locators found roadways, mill, leaching plant, bunk-

houses, dwelling-houses and shafts, cuts, adits, drifts, etc., upon said lode claims, and upon the ground on which they located said Homestake placer, and knew of the residence and presence of the owner's agent, Joseph Jurey, upon said Salt Lake No. 3 lode claim. (pp. ——.)

The Court overruled defendant's objection to all of said testimony and admitted all of said testimony and evidence, notwithstanding it was shown by plaintiffs that said ground was not vacant, unoccupied, or unappropriated public land, to which defendant excepted and now assigns the same for error. (pp. ——.)

3. Thereafter the witness, Guy Davis, being on the stand, was asked by the plaintiffs:

Q. Did you examine this Salt Lake No. 3, Guy Davis placer, with reference to ascertaining whether there were any lodes or veins showing on it; and what did you find?

The defendant objected to the question on the ground that the plaintiffs having relocated these claims as mineral claims, are estopped to deny the mineral character of the prior locations. The Court overruled the objection. The defendant excepted to the ruling of the Court on the ground stated in the objection, and asked: May we assume that objection will be made to all questions of that same character?

The COURT.—Yes, that objection will go to all the testimony they attempt to put in as to the non-mineral character of the locations.

4. Said witness Healey and other witnesses were thereupon allowed to testify concerning their exam-

ination of the ground within the boundaries of the defendant's lode claims at certain points therein, and that from such examination and the appearance of the ground, that they would not, as miners, be justified, in their opinion, in making lode mining locations of the ground.

The said testimony of said witnesses was objected to by the defendant and said objection was overruled. The defendant excepted to said ruling, and the same is now assigned as error. (pp. ——.)

Thereupon said witnesses answered in the negative. **[45]**

5. During the trial of said action plaintiffs offered in evidence their certain Exhibit "E," purporting to be a notice of location of the Homestake placer mining claim, covering a portion of the ground within the Midas and the Evening Star lode mining claims. The defendant objected to said offer for the reasons previously stated and because the plaintiffs have not first shown that the ground included therein was at the time of said placer location vacant, unoccupied and unappropriated public land. The objection was overruled by the Court, to which the defendant then and there excepted, which exception was assigned for error. (61–62.)

6. During the trial of said action plaintiffs further offered in evidence Exhibit "F," purporting to be a location certificate of said Homestake placer claim. The defendant objected to said exhibit, for the reasons previously stated. It not being shown that the ground included therein was at the time of said location vacant, unoccupied and unappropri-

ated public land of the United States. The Court overruled the objection, and defendant excepted to the ruling, which ruling is now assigned as error. (pp. 62–64.)

7. During the trial of said action the plaintiffs offered in evidence a paper purporting to be a copy of an adverse filed by the original plaintiffs in this action, as owners of the Homestake placer, and marked Plaintiffs' Exhibit "M." Defendant objected to introduction of said copy, for the reason that it is not properly alleged in complaint that the plaintiff filed any such adverse, and it is not answerable to any of the allegations in the complaint, and there is no sufficient allegation of an adverse upon which this proof can be based. Court overruled the said objection and defendant excepted to the ruling of the court, which ruling is now assigned for error, and said exhibit was read in evidence. (pp. 189–192, 203–215.)

8. During the trial of said action plaintiffs offered in evidence an instrument, their Exhibit "O," purporting to be a receipt from the U. S. Land Office at Elko, Nev., for the filing fees upon adverse Exhibit "M." Defendant objected to introduction of Exhibit "O" for same reasons as stated in the last preceding specification of error. The Court overruled said objection and defendant excepted to the ruling of the Court, which ruling is now assigned as error, and said exhibit was read in evidence. [46]

9. During the trial of said action plaintiffs, through Mr. Thatcher, their attorney, made the following offer in evidence, to wit, of a deed dated May

24, 1915, from Frank L. Reber to Gilbert C. Ross, George A. Cole, Ed. Malley and Guy Davis for all his right, title and interest in the Homestake placer, to which there is attached and was attached by me a few minutes ago, since the execution of the deed, by me, and not by Mr. Reber, a revenue stamp in the proper amount. Defendant objected to admission of said deed in evidence for the reason that it did not have at the time of its execution or at any time subsequent until within the last few moments, a U. S. Internal Revenue Stamp, and the same is canceled, and the same was not attached by the maker thereof, nor by his authority, nor in the manner specified by the Internal Revenue Act itself. (p. 248.)

The Court overruled said *object.* The defendant excepted to the said ruling upon the ground that the required U. S. Internal Revenue Stamp did not appear thereon and was not attached, when offered, and upon the ground that the said deeds are not properly stamped, as required by law, with the revenue stamps canceled according to the Act. (p. 272, 273.) Said deed was thereupon read in evidence and marked Exhibit "A–6." (pp. 276, 277.)

10. During the trial of said action plaintiffs offered in evidence a certain paper, testified to by their witnesses, Phillips and Healey, as having been found in a tin can in a monument found by them at point "21" on the map, Plaintiffs' Exhibit "A," and claimed by said witnesses to be the location notice of the Yellow Jacket lode mining claim. Said paper was marked Plaintiffs' Exhibit "G" for iden-

tification. The defendant objected to its admission in evidence on the grounds, (1) There is no proof of its genuineness or its signatures; (2) No evidence that the notice when found was where it was placed by the locator; (3) No probative of any issues; (4) Not within the issues, material or binding, on defendant, the owners or anyone; (5) It might have been placed there by anyone (pp. 102–3), and further (6) no foundation has been laid for the paper; (7) that plaintiffs are precluded from further proof, in rebuttal, to show the ground was unoccupied, unappropriated public land, such evidence being limited by the Court to their case in chief. (742.)

The Court overruled the objection, and admitted said Exhibit "G" in evidence. Defendant excepted to the ruling, and now assigns the same as error. (p. 742.) [47]

11. During said trial plaintiffs further offered in evidence their Exhibit "H," a purported location certificate for the said Yellow Jacket lode, or certified copy thereof.

Defendant objected to the admission of said Exhibit "H" on the same grounds urged to said Exhibit "G" (p. 104) and on the further grounds (p. 751) that the same does not conform to the statute, and no reference to any fixed or natural monument, and no sufficient description therein.

The Court overruled the objection, to which ruling defendant excepted, and now assigns said ruling as error. (p. 751.)

XI.

The Court erred in sustaining objections by the

plaintiffs to fair, lawful and proper questions put by the defendant to the plaintiffs' witnesses upon cross-examination, to the defendant's prejudice and injury. Defendant specifies the following instances:

1. During said trial, one Robert L. Phillips testified for plaintiffs, that within the last few weeks he had been over the ground embraced within the Salt Lake No. 3, the Midas and the Evening Star lode locations, and had taken 12 samples of rock from the various cuts and openings on the surface of said ground, indicated on the map, Plaintiffs' Exhibit "A," which samples had been assayed by one Woodbury, an Assayer, and the assay certificates from some of the samples were put in evidence by plaintiffs. (pp. 249–254.)

Cross-examination by defendant: Q. Mr. Phillips you took samples other than those, the assay certificates of which have been admitted in evidence, did you not? A. I took 12 altogether; how many have been admitted in evidence?

Mr. THATCHER.—There are 7 of those, Mr. Springmeyer.

WITNESS.—I took samples other than those that are in evidence.

Q. Now of the samples that are not in evidence, were there any that returned values in assaying?

Mr. THATCHER.—I have not offered any testimany as to what the values were, merely that he did take the samples; and we object unless it be shown that the cuts and excavations from which they were taken, were actually on the ground, and excavated

at the time of the location of the Homestake, Salt Lake No. 3 claim. [48]

The Court sustained said objection and ruled: I do not think any discovery which was made on the ground subsequent to a valid location made by the plaintiffs, can be of any value to you. It is not a question whether there is mineral in the ground but whether there was a discovery made, and if you discover anything there, no matter how rich, after a valid location and discovery by others, it does not avail you; for that reason I think the objection is well taken. I will allow you to question the witness as to any samples that were taken by him from openings or exposures that were in existence at the time these locations were made.

The defendant excepted to the ruling of the Court, and the ruling is here assigned for error. (pp. 254–255.)

2. Said witness Phillips was then asked by the defendant on further cross-examination, whether the samples taken by him, of which assays are in evidence, are all from places at which no work was done since this suit, or since the date of the placer location. And answered, that certificates Nos. 4 and 5 were from cuts where work was done in 1914. Sample No. 5 was from cut No. 4 where work was done since the placer location. Plaintiffs yield to motion to strike this out.

WITNESS.—Sample No. 2 taken on roadside where some work done since in stripping or picking the road bank.

Q. Do you know all these workings, where you

took the samples are in the same condition, where you took the samples, as when the placer was located.

A. No, they are not in the same condition. Defendant renews motion to strike out the assay certificates.

Gen. THATCHER.—Don't be in too big a hurry. (He questions witness, who replies:) I took sample 6 from a shaft east of the Midas location monument, same condition as when I first saw it before suit. I took No. 7 from a tunnel in gulch southeast of location. Objected to by defendant as reiteration.

The COURT.—(To Plaintiffs.) Why couldn't you to save time go over that matter with him at recess, and then have him testify that he took the samples from certain ground that was exposed at the time.

Mr. THATCHER.—That is satisfactory to me.

Defendant renews motion to strike out all the evidence of values, [49] particularly the assays, because there is no showing that the values were the same at the time of the examination, as at the time of the placer location.

The COURT.—I didn't intend to make the ruling that broad. Suppose in shaft 21, for instance, a depth of ten feet was exposed when the placers were located, and since then you sunk it to 40 feet; a sample from the ten feet would be admissible, because exposed; but a sample from the bottom not then exposed would be inadmissible.

Mr. SPRINGMEYER.—It is evidently of prior discovery, if we show at any time since or prior to

the placer locations, that there has been mineral discovered. And if your Honor rules the samples taken since the placer claims are admissible to show no values or mineral in place on the lode claims, it would be admissible to show the contrary or opposite proof.

The COURT.—The question is not presented. As I understand, Gen. Thatcher don't intend to offer any assays made from claimed lode formations not exposed prior to the placer locations, and if he has put in anything of that kind, it is a matter of inadvertence. In your case it is for you to prove that there is mineral in the ground, and that before the placers were located you had discovered the mineral, and if the mineral was exposed at that time, we may safely presume if it was exposed in some of your workings that you had discovered it. I shall only admit assays, no matter when taken, but taken from a surface exposed prior to or at the time of the placer locations.

The defendant excepted to the ruling of the Court, and now assigns as error the Court's said rulings.

The COURT.—You have your exception. Your question is as to whether he had other samples. If he took samples from ground that was exposed, the ruling is that he must answer. If he took other samples from ground not exposed, my ruling is that he need not answer. And when you go into this matter again I think you better ask a question that will bring you strictly within the rule, or without the rule, as the case may be. (pp. 255–261.)

XII.

The Court erred in sustaining plaintiffs' objec-

tions to and excluding [50] from the evidence, competent, relevant, material, admissible and proper testimony and evidence offered and asked by defendant, to his great prejudice, and defendant specifies as follows:

1. During the trial of said action, Joseph Jurey was testifying as a witness for defendant, and had testified that he originally located the Midas and the Evening Star lode claims, and conveyed them soon after to a predecessor in interest of the defendant, and that he knew the Salt Lake No. 3 lode claim also; had resided in Copper Canon, and worked for the owners of said three claims since in 1898 as foreman, caretaker, miner etc., of said claims; that he has resided on Salt Lake No. 3, and others also, in employ of such owners, viz., the Glasgow Western Explor. Co., an average of 10 or 20 men working at times. Witness was foreman ten years, and that the pay roll will show during what years, dates of employment, etc., described the workings on the claims, and adjacent claims of the group, how payments were made, etc. He was then asked: Q. How did you receipt for the payments made to you? (Objected to as immaterial.) (pp. 351–70–374, etc.)

Mr. SPRINGMEYER.—The purpose of this frankly is to get in the payrolls of the company. I want to show the witness was present when the money was paid to the men in the employ of the company during all these years, and saw them sign vouchers or receipts for the payment for the work on these three claims, and the other claims, particularly with reference to the rights acquired by de-

fendant and his predecessors by adverse possession.

The COURT.—It is utterly immaterial as to the other claims. If you can show work done on those claims, that is another matter, but the fact you pay out money on Salt Lake No. 3 to men working on the hill above, I don't see that helps the title to Salt Lake No. 3 in any way.

Mr. SPRINGMEYER.—Before I go on with that, will introduce some other evidence. Q. Mr. Jurey, during the years you were in the employ of the company, state whether the men were paid for the work they performed, on each of these claims, or whether they received wages for their general work.

Mr. THATCHER.—Objected to as immaterial.

Mr. SPRINGMEYER.—I want to show, and I submit it is material, these payments were not segregated, when $100 worth of work was done on Salt Lake No. 3, men were not paid for that exact work, but it went on account of [51] their wages. The amount of money paid is evidential of value, and besides with reference to adverse possession and assuming rights of ownership, the amount of money paid by the owner of these claims in holding the property, for supplies even, and particularly with reference to the men, would be most material, and it is to that point we particularly direct this evidence.

The COURT.—I don't think the amount of money you pay makes any difference. In support of adverse possession, it is the character of your possession which makes it adverse, and it is immaterial the amount you pay. It is what you do there to assert your title. (Discussion.) I think you better prove

your work first, if you can and if impossible to prove work on that claim, then you can prove what was done for the benefit of the claim somewhere else, and follow it up with the value of the work to this particular claim.

Defendant excepted to the ruling of the Court, and the ruling is now assigned for error. (pp. 370–373.)

2. Said witness Joseph Jurey testifying for defendant on the trial of said action, testified to sundry work and expenditures for annual labor and improvements upon each of said Midas, Evening Star and Salt Lake No. 3 lode claims, since their location, and certain affidavits of annual labor were admitted in evidence. And the buildings and improvements thereon, including mill, pipe-line, roadways, houses, excavations. (pp. 375–382.) Plaintiffs admitted the value of the roadway was at least $500, and the excavations for the mill at least $1000.

WITNESS.—The road led to the copper mine, from which ore was taken, on adjoining claim of the group, and the ores treated at this mill (pp. 374–376). Work in repairing and maintaining houses, pipeline, etc. That a tunnel was constructed called the Eagle tunnel (p. 382), which was a crosscut east into the mountain, designed to open a vein or ore body. Witness was then asked:

Q. Do you know whether that vein or ore body was believed by the management to run through the claims involved in this controversy? A. Yes, sir.

Mr. FORMAN.—We object to that and move to strike out the witness's answer.

The COURT.—Sustained the objection and the de-

fendant excepted thereto, [52] which is assigned for error. (pp. 382–383.)

3. Said witness Joseph Jurey testified further that the Eagle tunnel was 300 or 400 feet long in 1908, and was extended some, but the work was hard. (p. 383). Also the Farrine Adit was constructed on the group of claims beginning on Salt Lake No. 4, the mouth about 200 feet from Salt Lake No. 3, north, constructed in 1908 and 1909, 1000 feet long with about 300 feet drifting therefrom and an uprise 200 feet. Twelve or fourteen men were employed all the time. Copper exposed theron. (pp. 389–390.) Shafts sunk on each of the claims, Midas, Evening Star and Salt Lake No. 3 in 1913. When the men were employed on the group of claims of which said three lode claims are a part the men were paid for all the work on all the claims, and not separately for their work on any one claim or for the benefit of any one claim. I was present when the men were paid, and they signed the payroll in each instance, during all of that time, as vouchers or receipts. I recognize my father's signature. Plaintiffs admit witness knows all the signatures.

Thereupon defendant offers in evidence the said payrolls of the Glasgow-Western Exploration Co., for the purpose of showing the value of the improvements on the contiguous claims, and each of these claims during the year they have been owned by the defendant's predecessors in interest and by defendant.

The COURT.—The trouble with your offer is that you have done work on 10, 15 or 20 claims, perhaps

a 100 claims, and you are offering proof as to the amount paid for work on a 100 claims, say, to prove the value of a little work you did on one claim, or 3 claims.

Q. How many claims are there in the Copper Canon group? A. About twenty claims.

Mr. SPRINGMEYER.—I think that puts the matter in proper shape.

Plaintiffs still object on the ground it is incompetent, irrelevant and immaterial, and not tending to prove or disprove any of the issues.

The COURT.—I think so. You have not proven the amount of work that has been done. You have not offered to show what fractional portion of the work represented by this pay roll was done on these three particular claims, even though you show you paid out 10, 15, 20, or even 50 thousand dollars, for work [53] during 3 or 4 years. You don't show what portion of the work was done on these 3 claims, so it can be determined what money was paid for specific and exact work on these claims.

Mr. SPRINGMEYER.—We have shown it is impossible for us to do that.

The COURT.—That is your misfortune. * * I do not suppose there will be any question on the part of the plaintiffs that the amount of work done on that group of claims exceeded $100 for each claim.

Mr. THATCHER.—Oh, no.

The COURT.—The question is not the total amount of money expended but how much was expended on these claims, or how much for the benefit of those three claims.

Mr. SPRINGMEYER.—I can segregate it and show by the payrolls the amount paid for wages to the employees for each year; that does not include supplies or materials furnished, but merely the wages for labor on this group of claims—if the objection is to encumbering the record.

Mr. THATCHER.—I object generally on the grounds stated, whether you segregate it in years or not.

The COURT.—I will sustain the objection to the offer that is made, and you may take your exception.

Mr. SPRINGMEYER.—We take an exception to the ruling of the court on the ground the evidence offered is competent and of probative value in the case. (pp. 391–395.)

4. On the trial of said action, Parker Liddell in testifying for defendants, stated that he was a mining engineer and U. S. Deputy Mineral Surveyor (p. 282), made surveys of the Salt Lake No. 3, Midas and the Evening Star, and prepared a plat thereof (pp. 283–285), which is Defendant's Exhibit No. 4 (p. 439 et seq.); that he took samples of rock or ore found by him in the various excavations on said 3 claims, and made assays therefrom; that said samples were from mineral-bearing rock in place, or veins. That he took a sample or samples from a cut marked "60" on Defendant's Exhibit No. 5 (cut No. 20 on Plffs.' Ex. "A."), took the samples from a point which would be directly under the bottom of the cut as it had existed at the time I was there first, previous to Sept. 1913, took two samples, one above and [54] one below, a distinct plane of movement

in the rock. I assayed the samples and now identify the assay certificates. The certificates are offered in evidence by defendant.

The plaintiffs object to the certificates, because not shown whether they were taken from a cut or opening exposed at the time of the former trial.

The COURT.—(To Witness.) Were those samples taken from a point exposed prior to Sept. 1913?

A. They were taken directly under the exposure, from a total width of 4 to 6 feet, and from a point pretty well up, to a point below the parting planes.

Defendant renews the same offer. Plaintiffs object.

The COURT.—I will exclude those. You may have your exception. Defendant excepts on the ground the evidence is proper and competent and of probative value, and said ruling is now assigned for error (pp. 460–463).

5. During the trial of said action, said witness Liddell testified that he took a sample from a cut on Salt Lake No. 3 lode represented by his assay certificate No. 1 at point "2" on Plaintiffs' Exhibit "A" (point "14" on Defts. Exh. 5). That he could not say positively whether the point where the sample was taken was exposed or not, prior to Sept., 1913. There is cropping in the surface of that cut, and the material from the cropping extends from the point where I took the sample. The vein where I took the sample extends to the surface, and is a part of the material which extended to the surface in the way of a vein or mineral in place prior to Sept., 1913. Witness made an assay and produces the certificate

thereof, which defendant offers in evidence. The certificate was objected to by plaintiffs as incompetent, irrelevant and immaterial, the assay having been taken from an opening, cut, and exposure of a vein made and discovered since the initiation of the title of the plaintiffs to the placer ground. The Court sustained the objection and defendant excepted to the ruling of the Court, which ruling is now assigned for error (pp. 502–504).

6. Said witness Liddell further testified that he took another sample from the same cut, and from a smaller width across the same point, about 15 inches in width, and made an assay thereof, and produced the assay certificate showing the value found, which certificate he says is correct. [55] Defendant offered said assay certificate in evidence. The defendant makes the same objection thereto as to the preceding one. The Court sustained the objection, and defendant excepted to the ruling, which ruling is now assigned as error. (Sample No. 2.) (p. 504–505.)

7. Said witness Lidell testified for defendant further, that he took a sample from a cut at a point "20" on Plaintiffs' Ex. "A," on the Evening Star lode claim, representing about ten inches on the roof or back of the cross-cut, driven from the bottom of a 10-foot shaft from about 10 inches of quartz there exposed. I could not say whether the vein there was exposed prior to Sept., 1913. Subsequent work shows there must have been a vein exposed by that work, that was originally done; the sinking of the shaft was from the bottom of a cut and through the shaft there is a vein that must have been exposed at

the time the cut was run, because the cut could not have been dug at all unless it had exposed the vein. In digging out the cut you will expose the vein; through the shaft there is a vein, and I naturally think it must have been exposed. Witness made an assay and produces the certificates which is sample No. 8, and defendant offers the same in evidence. Plaintiff objects thereto on the same ground as the preceding sample, and the Court sustains the objection. Defendant excepted to the Court's ruling, and the same is now assigned for error. (pp. 506–511.)

8. Said witness Lidell testified for defendant that he took sample from other workings exposed on Salt Lake No. 3 at point exposed since September, 1913, being at point 9 on Defendant's Exhibit 5 and one on Defendant's Ex. "A," from a shaft. There was a vein or mineral-bearing rock in place exposed at that point prior to Sept., 1913, by the grading for the road which cut out a portion of the vein, so you could see the vein in the road bank. The sample was taken at or close to the bottom of a ten-foot shaft. That vein runs to the surface and to a point exposed in the road prior to September, 1913, which is assay certificate No. 4 taken by me from a width over 36 inches of the vein at the bottom of the shaft. That assay certificate correctly represents the assay returns or assay values of the sample I took. Said assay certificate was offered in evidence by defendant and objected to by plaintiffs. The Court sustained the objection and defendant excepted to the ruling of the [50] Court, which ruling was assigned for error. (Sample No. 4.) (pp. 511–512.)

9. Said witness Liddell further testified for defendant, that he took one other sample of rock from the northerly side of the shaft at point 9. Defendant's Exhibit 5, and point 1, Defendant's Exhibit "A" about 4 feet from the bottom. Defendant thereupon offered the assay certificate of this sample, to which plaintiffs objected on the same ground as to the preceding sample. The Court sustained the objection and defendant excepted to the ruling, which ruling is now assigned for error. (Sample No. 5.) (p. 513.)

10. During the trial of said action the defendant Joseph Ralph was testifying in his own behalf and testified to the building or construction of a mill, leaching plant, and other buildings built on the Salt Lake No. 3 lode mining claim by the owner thereof, in 1912, and that he knew the cost thereof because he paid the bills himself. He was then asked by his counsel: Q. What was the cost? The question was thereupon objected to by the plaintiffs as incompetent, irrelevant and immaterial, and because the cost of the leaching plant was not mining development work within the meaning of the statutes.

Mr. SPRINGMEYER.—We contend the mill was built for the purpose of working ores extracted in part from the Salt Lake No. 3, Midas and Evening Star, because they were a group of claims and developed under a general scheme of development, and operated under one general scheme and each year a certain amount of work was done, sometimes on a small scale, sometimes on a tremendous scale.

The Court sustained the objection, and defendant

excepted to the ruling of the Court, which ruling is now assigned for error. (pp. 609–610.)

11. During said trial said Joseph Ralph further testified to the construction of a bunk-house and office buildings built on said Salt Lake No. 3 during the year 1912, and was asked if he paid anything for those buildings, and answered: Yes, sir.

Mr. THATCHER.—The same objection, they do not constitute annual labor in development of a mine within meaning of the statute, and do not constitute $500 worth of improvements within the statute unless it be shown they were used in connection with this mine.

The Court sustained the objection, and defendant excepted to the ruling, which ruling is now assigned for error. (pp. 646–648.)

12. On the trial of said action, said Joseph Jurey testified for defendant that he knew of the houses built by defendant's [57] grantors on Salt Lake No. 3 during 1912–1913, an office, a boarding-house, and three bunk-houses.

Q. What were they reasonably worth? The question was objected to by plaintiffs, for the reason that it does not tend to the development of the claims in controversy as mining claims. The Court sustained the objection. The defendant to further fortify said question, asked: Q. Did any men live in those houses during 1912 and 1913? Plaintiffs object to the question, because living in the houses did not tend to develop the mining claims.

WITNESS.—The tools that were used were on this claim, used in working the claims. Probably

worth $300 a year to watch those tools. Men lived in those houses in 1912 and 1913. Q. Now, what were the houses reasonably worth? Objection on same grounds as before. The COURT.—I have ruled on that before. Defendant excepted to the ruling of the Court, and here assigns said ruling for error.

13. During said trial the defendant offered in evidence a certified copy of tax record, of the assessment and payment of taxes, on the office, boarding-house and stable on said Salt Lake No. 3 lode mining claim, from the records of Lander County, Nevada, for the period of from 1904 to 1914, and also upon the mill building and leaching plant, for the purpose of showing the good faith of defendant and his grantors, and the exercise of such rights of dominion as will entitle defendant to judgment by adverse possession.

Plaintiffs objected to said offer, and the Court sustained the objection. Defendant excepted to the ruling of the Court, and the ruling is now assigned for error.

XII.

Prior to the argument to the jury, the defendant requested the Court in writing that the Court should give to the jury the following instruction (being No. 1 of the defendant's requested instructions), viz.:

"The Court instructs the jury to find a verdict herein in favor of the defendant."

—which request was refused by the Court, to which ruling the defendant duly excepted, and now assigns said ruling as error.

XIII.

Prior to the argument to the jury, defendant requested the Court in writing, that the Court should give to the jury the following instruction (the same being numbered 6 of defendant's requested instructions), viz.:

"The Court instructs the jury that proof of two years open, adverse, continuous [58] and exclusive possession of lode mining lands under claim of right by a claimant, as a lode mining location, and during such time working the same in the usual and customary way of working such mining claims in the vicinity thereof, has all the force and effect, and is the full legal equivalent of all the acts and things necessary to be done to initiate a valid location of such lode mining claim; and if you find from the evidence in this case or these cases, that the defendant and his predecessors had been so in adverse possession of the Salt Lake No. 3, Midas, and Evening Star mining claims, or either thereof, for such period of two years at any time prior to the attempted locations of the Homestake and the Guy Davis placers, respectively, then the defendant's grantor or grantors, was a lawful locator by virtue of such adverse possession and working, at the expiration of said period of two years, independent of any other act or acts of location."

—which request was refused by the Court, and to which ruling the defendant then and there duly excepted, and now assigns said ruling as error.

XIV.

Prior to the argument to the jury, the defendant requested the Court in writing that the Court should give to the jury the following instruction (being instruction No. 8 of defendant's special request), viz.:

"The Court instructs the jury that it is not necessary to the exercise of lawful possession by defendant and his grantors over the lode mining claims involved in this action, the Salt Lake No. 3, the Midas and the Evening Star, that they or their agent or employee should reside or remain continuously upon each one of said lode mining claims, during all of the time of such possession, but it is sufficient if the defendant or his grantors were in position to and did have such supervision, dominion or control over said mining claims as their nature admits of, and such as is usual and customary with the owners of like property in the vicinity thereof."

—which request was refused by the Court, and to said refusal the defendant thereupon excepted, and now assigns said ruling as error.

XV.

Prior to the argument to the jury, the defendant requested the Court in writing to give the following instruction to the jury (being No. 11 of defendant's special requests), viz.:

"The Court instructs the jury that if you find from the evidence that the defendant and his grantors were in [59] possession under valid locations of their lode mining claims involved in these actions, either by way of adverse posses-

sion and working for two years as herein elsewhere explained, or by virtue of a compliance with the laws for initiating such lode mining locations, that such possession relates to all the ground covered by and included within the exterior side-lines and end-lines of said locations, as denoted by the boundary monuments upon the ground relating to each claim respectively, during all the time that such possession continued, and not to any less portion of said claim or claims."

—which request was refused by the Court, and the defendant thereupon excepted to said refusal, and now assigns the same as error.

XVI.

Prior to the argument to the jury, the defendant requested the Court in writing to give the following instruction to the jury (being No. 12 of defendant's special request), viz.:

"The Court instructs the jury that in the matter of the discovery of a lode, vein or ledge of mineral-bearing rock in place, in a lode mining claim, it is sufficient if such formation be found in a distinct channel or crevice, between walls of general country rock on either side, and different in formation from such adjoining country rock. It is mineralized matter containing between two walls, the value of which is greater than that which is contained in the adjoining country rock, and different in character. It is immaterial as to the width of such vein, ledge, lode or crevice containing such mineralized rock,

or as to its comparative richness in mineral values at any particular point upon the surface or depth of such vein. So long as such mineral-bearing rock or lode carries values, it is sufficient, and it is immaterial whether such values be or assay high or low, or that some miners or mining men would not locate or develop such vein as a mining claim. It is sufficient if any reasonably prudent man might locate or develop such vein as a mining claim, *in prudent man might locate or develop such vein as a mining claim,* in the expectation of finding paying values.

If such lode or vein vary in width or thickness, or in the degree of concentration of values, from point to point upon the surface, or in its dip below the surface, then it is for the decision of each locator of a lode mining claim, to determine the extent to which he will locate, follow or develop such lode *or* of mineral-bearing rock in place, and the law will not supervise his judgment and decision in that respect."

—which request was refused by the [60] Court. The defendant thereupon excepted to such refusal, and now assigns such ruling as error.

XVII.

Prior to the argument to the jury, the defendant requested the Court in writing to give the following instruction to the jury (being No. 14 of Defendant's special requests), viz:

"The Court instructs the jury that it is immaterial to the validity of a location of a lode min-

ing claim, whether there is a discovery of a lode or vein of mineral-bearing rock in place, made at or before the time of such location, and it is sufficient if such a discovery be made at any time subsequent thereto, and at any other place on the claim, different from the supposed or purported point of discovery thereon, provided work in the amount required by law for making such a discovery is performed at such point of subsequent actual discovery of the lode, vein or mineral bearing rock in place; and provided that such actual discovery and discovery work be actually made and done before the making of any conflicting mining location upon the same ground, or portions thereof.

If you find from the evidence in this case that such discovery had in fact been made on the Salt Lake No. 3, and that the discovery and discovery work required by law had been in fact made upon the Midas and the Evening Star, or either thereof, and that such discoveries occurred either at the respective points of discovery denoted by the location certificates of the respective claims, or at any other point or points upon either of said claims, at any time prior to the making of the conflicting placer locations by the plaintiffs, or their grantors to wit the Guy Davis or the Homestake placers, then you will find for the defendant on the issue as to such actual prior locations by the defendant's grantors and predecessors."

—which request was refused by the court, to which

refusal the defendant thereupon excepted, and now assigns as error the court's ruling.

XVIII.

Prior to said argument to the jury, the defendant requested the Court in writing to give to the jury the following instructions (being No. 15 of defendant's special requests) viz:

> "The Court instructs the jury that whenever a locator has discovered a lode or vein or mineral-bearing rock in place, and posts his discovery notice and monument, and monuments the ground on his boundaries, records his location certificate, complies with the legal requirements, [61] his location is complete, and it is immaterial to the continued validity thereof, if the discovery monument shall thereafter be removed or lost, or the point of discovery become covered, obliterated or in doubt. And if you find from the evidence in this case that such lode or vein containing mineral-bearing rock in place was in fact discovered upon the three lode mining claims involved herein, and that the same were duly monumented, then the Court instructs you that there was a sufficient discovery, even though the precise points, *even though the precise points* where such discoveries were made, on any one or more of said three lode mining claims have become lost, covered or unknown, or the location monument removed, lost or destroyed at some time subsequent to the making of such lode locations respectively."

—which request was refused by the Court, and to

which refusal the defendant thereupon excepted, and now assigns said refusal as error.

XIX.

Prior to the argument to the jury, the defendant requested the Court in writing to give to the jury the following instruction (being No. 16 of the defendant's special requests), viz:

> "The Court instructs the jury that if you find from the evidence that the defendant and his grantors had entered into and held possession of the lode mining claims involved in these actions and worked the same in the usual and customary way in the vicinity thereof, for a period of two years prior to the making of the placer locations of the plaintiffs, then the law presumes in aid thereof that all the acts necessary to a valid location of said lode mining claims, had been done and performed at the time of such lode mining locations, and that such possession (having the effect of a location under the law) is sufficient to give defendant's grantors a lawful right to the possession of said mining claims, if kept alive as required by law, as against the subsequent placer locations of the plaintiffs' grantors."

—which request was refused by the Court, and to which refusal the defendant thereupon excepted; and said refusal is now assigned as error.

XX.

Prior to the argument to the jury, the defendant requested the Court in writing to give the following instruction to the jury (being No. 17 of defendant's special requests for instructions), viz:

"The Court instructs the jury that if at the time of the initiation of the lode mining claims or locations herein involved, by defendant's grantors, or at any time thereafter prior to [62] plaintiffs placer locations, mineral-bearing rock in place was discovered on said lode mining locations by the locators or owners thereof, but at some point not midway between the side-lines thereof, but east or west from such center line, and the required amount of location work performed thereon, according to the law at the time thereof, as elsewhere instructed, and the owners held adverse possession of said claims according to the boundary monuments upon the ground, for two years prior to the plaintiffs' locations, then the Court instructs you that such adverse possession of said claims related to all the ground embraced within the exterior lines of said locations as monumented, and it is immaterial to the rights of the defendant and his grantors where the point of discovery within such exterior lines, was or occurred."

—which request was refused by the Court, and the defendant thereupon excepted to such refusal, and now assigns said refusal as error.

XXI.

Prior to the argument to the jury, the defendant requested the Court in writing, to give the following instruction to the jury (being No. 28 of defendant's special requests), viz:

"The Court instructs the jury that if you find from the evidence that at the time of the entry

and making by plaintiffs of their grantors of the Homestake placer and the Guy Davis placer, the defendant or his grantor, was in possession of the ground, or any portion thereof, covered by such placer locations or filings, under and by virtue of prior location or locations, as lode mining-claims, and the performance of annual labor or improvements thereon during the same or the preceding year, according to the legal requirements as elsewhere herein explained to you, then you are instructed that the entry thereon, and the making of said placer locations was illegal and void; that the same were in law trespasses on the rights and possession of the defendant; that all their steps of alleged discovery of minerals, the posting and recording of notices, or the monumenting of said placers, were ineffectual; and that the plaintiffs and their grantors acquired no rights whatever by reason of said placer locations."

—which request was refused by the Court, and the defendant thereupon excepted to such refusal, and now assigns said refusal as error.

XXII.

Prior to the argument to the jury, the defendant requested the Court in writing to give to the jury the following instruction (being No. 30 of defendant's special requests), viz: [63]

"The Court instructs the jury that in case No. 1872 now on trial, involving the adverse of the owners of the Homestake placer against the patenting of the Midas and the Evening Star lode

mining claims the original plaintiffs who instituted the action, and purport to have filed the adverse in the U. S. Land Office, were J. J. Healey, Murray Scott, William Forman and George B. Thatcher. That at the time of the opening of the trial herein, the following parties were upon plaintiffs' application, substituted as parties plaintiff in place of said original plaintiffs, viz.: George A. Cole, Ed. Malley, Gilbert C. Ross, J. J. Healey, Guy Davis, George B. Thatcher and William Forman.

The Court instructs you that unless each and all of the present parties plaintiff, last named, were either interested in said Homestake placer, as the owners of undivided interests therein, at the time when this action was begun on Sept. 30, 1914, and filed the adverse in the U. S. Land Office at Elko, Nev., in support whereof this action was begun; or else, that such of the present above-named plaintiffs as were not original adversing plaintiffs, have since this action was filed on Sept. 30, 1914, purchased or acquired an undivided interest in the said Homestake placer mining claim from one of said original plaintiffs who began the action and filed the adverse, then none of the plaintiffs can recover in this action.

And if some of the present parties plaintiff aforesaid, were neither parties plaintiff at the beginning of this action, nor have purchased an undivided interest since said time, from one of the parties plaintiff at the beginning of the action who filed said adverse you cannot find a ver-

dict in favor of any one of the present parties plaintiff in this action."

—which request was refused by the Court, and defendant thereupon excepted to said refusal, and now assigns the same as error.

XXIII.

Prior to the argument to the jury, the plaintiffs delivered to the Court their special requests in writing, whereby they requested the Court to instruct the jury as propositions of law, the following: That in order to constitute a valid location of the Evening Star and Midas lode claims, it was necessary for defendant in this action to make a discovery within the boundaries of each claim, and to post at the point of discovery a notice of such location, which notice must contain the name of the lode or claim, the name of [64] the locator or locators, the number of linear feet claimed in length along the course of the vein each way from the point of discovery, with the width on each side from the center of the vein, and the general course of the vein or lode as near as may be. The locator shall also before the expiration of ninety days from the posting of such notice, sink a discovery shaft upon the claim to a depth of at least ten feet from the lowest part of the rim of such shaft at the surface, or deeper if necessary to show by such work a lode deposit of mineral in place. A cut or cross-cut or tunnel which cuts the lode at a depth of ten feet, or an open cut at least ten feet in length along the lode from the point where the lode may be in any manner discovered, is equivalent to a discovery shaft. The locator must also within the ninety days describe the

boundaries of his claim by marking a tree or rock in place, or by setting a post or stone one at each corner, and one at the center of each side line. When a post is used, it must be at least four inches square, by four feet six inches in length, set one foot in the ground, etc. * * * These acts are mandatory and must have been performed by the defendant or his grantors prior to the entry and location of the Homestake placer by the plaintiffs.

The defendant objected to the giving of said instruction, and to all and every instruction requested by plaintiffs, which propose to submit to the jury for decision and finding the question whether or not a discovery of a lode or vein of mineral in place, had been made by the defendant or his grantors upon or within the limits of the Midas or the Evening Star lode mining claims prior to the plaintiff's Homestake placer location, or whether defendant or his grantors had made a discovery shaft or other discovery work on said lode claims or posted notices, or marked or monumented said claims, or other step in location of a claim, on the ground that there is no evidence of the failure to the defendant's grantors, or locators of said claims, to make such mineral discoveries, do necessary discovery work or to perform any other essential act in making a valid mining location of such lode claims, and the Court should not instruct the jury upon any hypothesis not presented by competent and material evidence within the issues. On the further ground that the undisputed evidence of the prior adverse possession of the ground embraced within said lode claims by defendant's [65] grantors, accord-

ing to law, for more than two years prior to the initiation of the Homestake placer, is the full legal equivalent of all the acts and steps required by law to make or initiate valid mining locations of each of said lode claims, including discovery of mineral and other necessary acts of location, and evidence is not admissible to overthrow the title and right of possession created by the statute of limitations. The Court overruled the defendant's objection, and gave said instruction to the jury, with these amendments, namely, by inserting "or his grantors" after "defendant" in the 2d or 3d line of said requested instruction, and by inserting after the requisition of the marking of said claims, near the close, the words, "but in this case there is no contention, and it is admitted that the boundaries were so defined." to which ruling and the giving of said requested instruction, submitting said questions to the jury, the defendant thereupon excepted, and now assigns the same as error.

XXIV.

Prior to the argument to the jury, the plaintiff requested the Court in writing to instruct the jury as follows:

> "The jury is instructed that the laws of the United States require as one of the essential conditions to the making of a valid location of unappropriated public lands of the United States under the mining laws, a discovery of mineral within the limits of the claim, and the exclusive right of possession is conferred only on one who has made a valid location, one of the essentials of

which is a valid discovery. Prior to such discovery, mineral land is in law vacant and open to exploration and location, subject to the rule that no prospector is authorized by any form of forcible, fraudulent, surreptitious or clandestine conduct to enter or intrude upon the actual possession of another prospector; for every miner upon the public domain is entitled to hold the place in which he is working against all others having no better right. The actual possession of the prior arrival will be protected to the extent needed to give him room to work, and to prevent probable breaches of the peace; but while he is thus protected, his possession must yield to the actual location on a valid discovery made by one who has located peaceably, and neither clandestinely nor with fraudulent purposes. The right of possession to a claim marked on the ground, comes only from a valid location. Parties may not go on the public domain, and acquire the exclusive [66] right of possession by the mere performance of acts prescribed for location in the absence of an actual discovery."

Defendant objected to said requested instruction on the ground that the same is inapplicable to the evidence; that there is no evidence of the absence of a discovery on either of defendant's lode claims, or other facts implied by said requested instruction, and the Court should not instruct upon an hypothesis not presented by conflicting evidence within the issues; and because all said matters are irrelevant because of the undisputed evidence of the adverse possession of

the ground under said lode claims, by defendant's grantors for the period of limitations, whereby defendant's right and title to said ground under his lode mining claims, are established without reference to, and beyond the scope of said suggested inquiry.

The Court overruled said objections, gave said instruction, and defendant excepted thereto, and assigns same as error.

XXV.

Prior to the argument to the jury, the plaintiffs delivered to the Court their request in writing that the Court give to the jury an instruction as follows: The Court instructs the jury that a competent person may go upon the public domain of the United States with the *bona fide* intention of making a discovery of mineral, and may define the boundaries of his claim by means of notice and monuments thereon, and so long as such locator is in the actual possession of his location, so defined endeavoring to make a discovery, he will be entitled to the peaceable possession of such claim as against one entering thereon as a trespasser, but in the absence of a discovery should he permit another competent person to go peaceably upon the claim, and should such person make a valid discovery of mineral and locate the same, and in all things comply with the requirements as to monumenting, posting notice and recordation, then such subsequent locator would acquire title to such claim so located, subject only to the paramount title of the United States.

The defendant objected to the giving of said instruction, because the same is inapplicable to the evi-

dence; there is no evidence of the facts implied in the last half of said instruction; and the Court should not instruct but upon a hypothesis disclosed by conflicting competent evidence within the issues.

The Court overruled said objection, and gave said instruction, and the [67] defendant now assigns said ruling as error, and excepts to said refusal, because the Court erred therein.

XXVI.

Prior to the argument to the jury the plaintiffs requested the Court in writing to give to the jury the following instruction:

"The jury are instructed that to constitute a valid discovery upon a lode mining claim, three elements are necessary; there must be a vein or lode of quartz or other rock in place; the quartz or other rock in place must carry gold or some other valuable mineral deposit; and the two preceding elements must when taken together be such as to justify a prudent man in the expenditure of his time and money in the effort to develop a valuable mine. You are therefore instructed that even though you may believe and find from the evidence that the grantors of defendant made a discovery of a vein or lode on the Salt Lake No. 3, the Midas and the Evening Star lode claims, yet if you further believe and find from the evidence that such veins or lodes so discovered did not carry gold or some other valuable mineral deposit, as to justify a prudent man in the expenditute of his time and money in the effort to develope a mine, then you will find the issues in favor of the plaintiffs."

The defendant objected to said requested instruction, because the same is inapplicable to the evidence the evidence does not disclose the state of facts, or conflict therein, implied by the foregoing instruction; and the instruction is without the issues and evidence. The Court overruled said objection, and gave said instruction to the jury, and defendant excepted to the said ruling, and now assigns the same as error.

XXVII.

And the defendant objected and excepted, and now objects and excepts to so much of the Court's instructions given, or requested by plaintiffs and given, the operation of which places upon the defendant a burden of proof which is not his, and which in law rests upon defendant, as to attacking and establishing by proof, the invalidity of defendant's lode mining claim or claims, either for want of a discovery, or any other essential to a valid lode location thereof, or of either of them, to the extent that any such evidence might or could be admissible in that behalf, and not upon the defendant to prove or establish said facts and acts of location in support of said lode claims; and because under the undisputed evidence of the prior adverse possession of [68] defendant's grantors, of each of said lode mining claims, the defendant's title and right of possession of the ground is confirmed and established by the statute of limitation of two years of the State of Nevada, and evidence or instructions as to individual acts of location, are not admissible to destroy such title or right of possession, or vary the indisputed presumptions of law attaching thereto.

WHEREFORE defendant, in consideration of all the foregoing matters, prays that the verdicts of the jury and the judgment of the Court may be in all things vacated, set aside and for naught held, and that a new trial be granted and ordered by the Court.

GEORGE SPRINGMEYER,
P. G. ELLIS,
Defendant's Attorneys.

State of Nevada,
County of Washoe,—ss.

P. G. Ellis, being duly sworn, deposes and says: That he is one of the attorneys for the defendant in the above-entitled action; that in his judgment the above and foregoing exceptions relied upon on motion for a new trial are well taken in law.

P. G. ELLIS.

Subscribed and sworn to before me July 28, 1915.
[Seal] GEORGE SPRINGMEYER,
Notary Public.

Service of the foregoing and a copy thereof admitted this 30th day of July, 1915.

GEO. B. THATCHER and
WM. FORMAN,
Attorneys for Plaintiffs.

[Endorsed]: No. 1872. In the District Court of the United States in and for the District of Nevada. George A. Cole, Ed. Malley, Gilbert C. Ross, J. J. Healey, Guy Davis, George B. Thatcher and William Forman, Plaintiffs, vs. Joseph Ralph, Defendant. Assignments and Specifications of Error, or Memorandum of Exceptions. Filed this 30th day of July,

1915. T. J. Edwards, Clerk. George Springmeyer and P. G. Ellis, Attorneys for Defendant. [69]

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*In the United States Circuit Court of Appeals for the Ninth Circuit.*

In the Matter of the Designation of the Honorable FRANK S. DIETRICH, United States District Judge for the District of Idaho, to Sit in the District Court of the United States for the District of Nevada.

**Order Designating Judge to Hold Court.**

Whereas in my judgment the public interest requires that the Honorable FRANK S. DIETRICH, Judge of the United States District Court for the District of Idaho, be designated and appointed to hold the District Court of the United States for the District of Nevada, for and during the May term of such court at Carson City, Nevada;

I accordingly hereby designate and appoint said Honorable FRANK S. DIETRICH to hold said court for and during said May term.

August 24, 1916.

WM. W. MORROW,
United States Circuit Judge for the Ninth Judicial Circuit.

[Endorsed]: U. S. District Court, District of Nevada. Order Designating Hon. Frank F. Dietrich, to Hold Court. Filed August 25th, 1916. T. J. Edwards, Clerk. By H. D. Edwards, Deputy. [70]

*In the United States District Court for the District of Nevada.*

No. 1872.

GEORGE A. COLE et al.,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Decision on Application for a New Trial.**

Nov. 11, 1916.

GEORGE B. THATCHER, WILLIAM FORMAN and H. C. PRICE, Attorneys for Plaintiffs.

P. G. ELLIS, Attorney for Defendant.

DIETRICH, District Judge:

This is an adverse, brought by the claimants of a placer location against the defendant, the owner of a prior lode claim embracing substantially the same surface area. The action was originally brought in the State Court, and later, upon the defendant's petition, removed here. An inspection of the complaint leaves some doubt whether in drafting it the pleader was of the view that the cause of action is one at law or in equity, but by stipulation of the parties the case was treated as an action at law, and was tried before the Court sitting with a jury. A general verdict was returned for the plaintiffs, upon which a judgment was duly entered. Thereupon defendant made application for a new trial, but before it was determined the judge of the district, who presided at the

trial, being of the opinion that he had become disqualified, requested my assignment to hear it, and accordingly it has been submitted to me for decision.

*In limine* this succession of judges suggests a question which has impressed me as being of such importance that I am impelled to give it consideration, reluctant though I may be to go beyond the issues raised by counsel in their briefs.

In his grounds for a new trial the defendant makes no charge of misconduct on the part of the jury, nor does he contend that either the presiding judge [71] or any juror was biased or prejudiced or otherwise disqualified. So far as appears, the issues were fairly considered, and under the instructions the verdict is not against the evidence. On the contrary, if we assume that no error was committed in charging the jury, it must be held, I think, that not only is there substantial evidence to support the verdict, but the preponderance is upon that side. No judge I am sure would grant a new trial because of his dissatisfaction with the action of the jury; under the law, as it was explained to them, they properly discharged their duty. The only grounds upon which the allowance of the application could be predicated, therefore, are such as involve pure questions of law: Did the Court erroneously exclude from the consideration of the jury material and competent proofs? Or did it admit immaterial and incompetent matters of a prejudicial character? And, in its instructions to the jury, did it erroneously construe the law? And the most that can be said of these questions is that they are open and debatable; there is no

good reason for believing that the trial Judge decided them hastily or inadvertently, or that if he were not now disqualified he would be passing upon this application adopt a different view.

Admittedly the defendant has the right of appeal, and every consideration which can be put forward here he can urge with equal force and favor in support of a prayer for a new trial, in the appellate court. It is not a case where a party charges the improvident exercise by the trial court of a discretionary power, and where, therefore, if aggrieved, he is practically without remedy in the appellate court. Upon the assignments made the jurisdiction to review and grant relief is quite as broad in one court as in the other.

In view of these conditions, the preliminary question is, whether we can with propriety revise rulings advisedly made by the presiding Judge in the course of the trial, and grant a new trial in case we are unable to concur in his views. Suppose for the moment that we answer the question in the affirmative—what are the possible consequences? It is well settled that ordinarily an application for new trial is addressed to the sound discretion of the trial court, and its action thereon is not reviewable. Should the defendant's application be granted, therefore, it would be necessary to retry the case; the question whether our views or those of the trial Judge, are correct, could not first be determined by the appellate court. It would [72] be wholly uncertain who would preside over the second trial. Even if the present disqualification of the Judge of the district

should continue, there could be no assurance that the Judge who grants the new trial would preside, or that the Judge assigned for that duty would entertain his views, and there is no more reason why, in a second trial, these views should be accepted as the law of the case than that upon the motion for a new trial the views of the Judge presiding at the first trial should be so accepted. An endless succession of trials and new trials would thus become possible. In the absence of the most cogent reasons a rule of procedure susceptible to such consequences ought not to be recognized or followed. And why should we adopt it here? Is there any reason *ex necessitate*? It is to be conceded that in this court, as in most jurisdictions, the losing party is invested with the right to apply for a new trial, and to have his application acted upon by a competent and impartial tribunal, and that this right is of such a substantial character that he cannot be deprived of it though the fortuitous circumstance of the death or disqualification of the Judge who originally tried the case; and, further, that a new trial will be granted as of course, without regard to the merits of the application, when the conditions are such that the only other alternative is a practical denial to the litigant of the right of new trial. But these conditions do not here exist and such action is not necessary to preserve the defendant's rights. The law has established an appellate tribunal, and has conferred upon the defendant the right to apply there for the correction of errors, if any there be, through the medium of a new trial; and, as we have seen, that right is, under the circum-

stances of the case, substantially the equivalent of the right to apply in this court. The procedure is different, it is true, but the footing of the applicant is the same in one court as in the other, and while the expense is greater, upon the other hand the result will be of a correspondingly higher value. The denial of his application here will therefore work no substantial impairment of his right; he simply goes to another tribunal.

A measure of industry has brought to my attention no decided case in which the precise question has been involved. In a general way light is thrown upon it by the learned discussion of Judge Hammond in Ives v. Grand Trunk Ry. [73] Co., 35 Fed. 176, but the question there under consideration was essentially different. Counsel for the defendant may be able to discover cases which have escaped my search, or may be able to bring to my attention reasons that have not occurred to me, and if upon reflection he feels that the conclusion which I have reached is erroneous I shall be very willing to entertain a motion for a reconsideration of the question; but in my present view I do not feel that I can with propriety consider anew rulings in mere matters of law made by the trial Judge, and, there being no other substantial grounds assigned in support of the application, it will be denied. Entry of the order will be withheld fifteen days to enable the defendant to present such motion, if he deems it advisable, the same to be in writing, and submitted, within the allotted time, upon written argument.

[Endorsed]: No. 1872. In the United States District Court for the District of Nevada. George A. Cole et al. vs. Joseph Ralph. Decision on Application for a New Trial. Filed November 14th, 1916. T. J. Edwards, Clerk. [74]

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*In the United States District Court for the District of Nevada.*

No. 1872.

GEORGE A. COLE et al.,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Order Denying Application for New Trial.**

The application of the defendant herein, heretofore, to wit, on the 25th day of August, 1916, came on for hearing at the courtroom of the above-entitled court at Carson City, Nevada, and the same having, after argument by counsel for the respective parties, been submitted for decision upon written briefs, which were thereupon filed and presented, now, upon consideration, and for the reasons explained in decision dated November 11, 1916, and filed herein on November 14, 1916.

It is ordered that the defendant's application for a new trial of this cause be, and the same is, hereby denied. The defendant is granted a stay of execution for the period of thirty days from and after the date of the filing of this order.

Dated this 7th day of December, 1916.

FRANK S. DIETRICH,

Judge Presiding by Special Assignment.

[Endorsed]: No. 1872. U. S. District Court, Dist. Nevada. Geo. A. Cole et al. v. Joseph Ralph. Order Denying New Trial. Filed December 11th, 1916. T. J. Edwards, Clerk. [75]

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*In the District Court of the United States in and for the District of Nevada.*

No. 1872.

THE HOMESTEAD PLACER

vs.

THE MIDAS and THE EVENING STAR LODES.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GEO. B. THATCHER, GUY DAVIS, WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Petition for Writ of Error.**

To the Honorable E. S. FARRINGTON, Judge; Hon. FRANK S. DIETRICH, District Judge.

Comes now the defendant, Joseph Ralph, and feeling himself to be aggrieved by the judgment and decree of the Court, rendered and entered herein in the District Court of the United States, for the

District of Nevada, on the third day of June, A. D. 1915, says that in the said judgment and decree, and in the proceedings had prior thereto in this cause, certain errors were committed to his prejudice, which appear in detail from the assignments of error filed herein.

That the operation of said judgment was suspended by the filing of a petition and motion for a new trial of this cause in said trial court on the third day of June, A. D. 1915, and that the Court heard argument upon and took said petition under advisement, and thereafter on the 11th day of December, A. D. 1916, overruled and denied the same.

Wherefore, this defendant prays a Writ of Error to the United States Circuit Court of Appeals of the Ninth Circuit, to review the said judgment of said District Court, and to remove this cause into said Circuit Court of Appeals for the Ninth Circuit of the United States, according to the laws of the United States in that behalf, for the correction of the errors so complained of; and that a transcript of the record, proceedings and documents upon which said judgment or decree was based, duly authenticated, may be sent into the said last mentioned Court sitting at San Francisco, California. That proper order be made relating to the security and *supersedeas* bond required of him, and that upon the giving of such bond, said Writ of Error be made to operate as a *supersedeas,* and that all further [76] proceedings in said trial court may be ordered suspended, stayed and superseded until the final determination hereof upon review. And

your petitioner will ever pray.

Dated this 12 day of December, A. D. 1916.

P. G. ELLIS,

Attorney for Defendant and Plaintiff in Error.

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*In the District Court of the United States for the District of Nevada.*

No. 1872.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GEORGE B. THATCHER, GUY DAVIS and WILLIAM FORMAN,

Plaintiffs,

Versus

JOSEPH RALPH,

Defendant.

**Petition for Appeal.**

To the Honorable E. S. FARRINGTON, Judge of Said District Court, and Hon. FRANK S. DIETRICH, District Judge:

Comes now Joseph Ralph, and feeling himself to be aggrieved by the judgment or decree of the Court rendered and entered herein in the said U. S. District Court for Nevada on the third day of June, A. D. 1915, says that in said judgment and decree and in the proceedings had prior thereto in this cause, certain errors were committed to his prejudice, which appear in detail from the assignments of error filed herein.

That the operation of said judgment was suspended by the filing of a petition and motion for a

new trial by defendant in this cause and court on the third day of June, A. D. 1915, and that the Court heard argument thereon and took the same under advisement and thereafter on the 11th day of December, A. D. 1916, overruled and denied the same.

Wherefore this defendant prays an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to review the said judgment of said District Court, and to remove this cause into said Circuit Court of Appeals for the Ninth Circuit according to the laws of the United States in that behalf, for the correction of the errors so complained of; and that a [77] transcript of the record and proceedings and documents upon which said judgment or decree was based, may be sent into the said last mentioned Court sitting at San Francisco, California. That proper order be made relating to the security and bond required of him on such appeal, and that upon the giving of such bond, said appeal be made to operate as a *supersedeas,* and that all further proceedings in said trial court may be ordered suspended, stayed and superseded until the final determination hereof upon review. And your petitioner will ever pray.

Dated this 12 day of December, A. D. 1916.

P. G. ELLIS,

Attorney for Defendant and Plaintiff in Error.

*In the District Court of the United States in and for the District of Nevada.*

No. 1872.

Involving the Adverse of the Homestead Placer Against the Midas and Evening Star.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GEORGE B. THATCHER, GUY DAVIS and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Assignment and Specifications of Error.**

Comes now the defendant in the above-entitled cause or action, and says that the Court committed manifest and prejudicial errors upon the trial hereof, and files the following assignments of said errors, upon which he will rely for the reversal of the judgment and decree of said Court, upon review in the U. S. Circuit Court of Appeals, to wit:

Assignment No. 1. The Court erred in permitting the introduction of any evidence by the plaintiffs, because their complaint herein does not state facts sufficient to constitute a cause of action, thus:

(a) The complaint does not allege that at the time of making plaintiff's [78] Guy Davis location, the ground included therein was either open or vacant, unoccupied, unappropriated, or public mineral lands of the United States.

(b) The complaint does not and cannot in this action put in issue the mineral or nonmineral character of the said ground.

(c) The complaint does not allege any ouster or detention of the said ground, wrongful or otherwise, by the defendant from the plaintiff; nor any wrongful detention at the time suit was begun.

(d) Because the complaint alleged no adverse filed in the U. S. Land Office having jurisdiction of said lands, by the plaintiffs as required by law.

(e) The complaint alleges no facts showing a valid location by the plaintiffs or their grantors, nor any invalidity in defendant's prior location, the Midas and Evening Star.

Before any evidence was introduced, the defendant at the trial objected to the introduction of any evidence by the plaintiffs because of such insufficiency, and the objection was overruled. To which ruling defendant excepted, and now assigns the same as error.

ERROR IN ADMITTING IMPROPER EVIDENCE FOR THE PLAINTIFFS.

Assignment No. 2. During the trial of said action the plaintiffs' witness, D. S. Van Orman testified that in 1913 he discovered placer and made a location in Copper Canyon. He was then asked: What did you call the claim? Ans. The Guy Davis Placer. Defendant objected to any evidence pertaining to plaintiffs' mining claims, the location or discovery of mineral upon either of them, until it is first shown that the ground was at the time unoccupied and unappropriated public land.

The COURT.—If he fails to make that proof his testimony will be stricken out, but I will allow him to prove his case in his own way.

Defendant excepted on the grounds stated in the objection to the evidence and to all that line of testimony, so it will not be necessary to repeat the objection. Defendant assigns said ruling as error.

Assignment No. 3. Thereupon, under said ruling, plaintiffs' witnesses, [79] Van Orman, J. J. Healey and Robert L. Phillips, were permitted to testify to the making of the Homestead placer location upon the ground covered by the prior Salt Lake No. 3, Midas and Evening Star lode claims, without making any showing or giving any evidence that said ground was then vacant, unoccupied or unappropriated, but on the contrary, testifying affirmatively that when the locators entered on the ground to make said Homestead location they knew that the ground was held and claimed by defendant's grantor the Glasgow & Western Exploration Co., under said Salt Lake No. 3, Midas and Evening Star lode locations; that they saw and knew of the boundary stakes, buildings, mill, leaching plant, roadway, old and new cuts and excavations, and other improvements on the ground, constructed and owned by said company, including some recent development work done by said company, and knew of the presence of an agent or employee of said company then present and living in one of the houses on said ground and having custody for the owner; and that with said knowledge they entered on the ground without the knowledge or consent of said owner, or his agent

on the ground, and set their stakes for said Homestake placer so as to overlap and take in considerable portions of each of said three lode claims, and set up a claim to the ground. And that when they did so they had knowledge of the shafts already sunk by defendant to bedrock on each of said lode claims, exposing the placer deposits.

All of said evidence as to the location of the ground under the said Homestake placer claim, was admitted by the Court, over defendant's said objections and exceptions that plaintiffs have not shown that the ground was vacant, unoccupied and unappropriated public lands of the United States, and the defendant now assigns the admission of said evidence as error.

Assignment No. 4. Thereupon during the trial of said action, the witness J. J. Healey was permitted to testify for plaintiffs, that in the fall of 1913, he prospected over the ground, discovered placer mineral and made the location of the Homestake placer, for himself and his partner Murray Scott.

Which testimony was admitted by the Court over defendant's said objection that plaintiffs must first show that the ground was vacant, unoccupied and unappropriated, before locating the claim. To the action of the Court in admitting said testimony, the defendants objected and excepted and now [80] assigns the same as error.

Assignment No. 5. During the trial of said action, plaintiffs offered in evidence their Exhibit "E," a location notice of the said alleged Homestake placer, reciting that the locators, John J. Healey

and Murray Scott, have on this Sept. 8, 1913, located certain placer mining ground situate in Battle Mountain mining district of Lander County, Nevada, describing it, to be known as the Homestake placers, placer mining claim; filed for record Sept. 15, 1913, in records county recorder, Lander County.

The said Exhibit "E" was admitted by the Court over defendant's objections that plaintiffs must first show that the ground on which they located said placer was at the time vacant, unoccupied and unappropriated public land of the United States. Said objection was overruled and said Exhibit "E" admitted in evidence. Defendant excepted thereto and assigns the ruling as error.

Assignment No. 6. During the trial of said action, the plaintiffs offered in evidence their Exhibit "F," location certificate for the Homestake placer, reciting location on Sept. 8, 1913, and discovery under name of the Homestake placer deposit on certain ground, describing it in Battle Mountain mining district, in Lander County, Nevada, position of location work, and the record of said certificate in the records of Lander County recorder, Nevada, on Nov. 24, 1913.

Defendant objected thereto, and the said exhibit was admitted by the Court over defendant's said objections and exceptions, that they must first show the ground was vacant, unoccupied and unappropriated public land. Defendant assigns the admission of said Exhibit "F" as error.

Assignment No. 7. During the trial of said ac-

tion, the plaintiffs asked their witness L. O. Ray this question on the stand:

> "Q. Did you examine this Salt Lake No. 3— * * * with reference to ascertaining whether there were any lodes or veins showing on it; and what did you find?"

And the defendant having objected to said question as incompetent and immaterial, because plaintiffs relocated the ground and are estopped to deny the validity of the prior location, or the mineral character of the ground; the Court [81] overruled the objection, and defendant excepted to said ruling and now assigns the same as error. The defendant then asked:

> "May we assume that that objection will go to all the testimony they attempt to put in as to the mineral character of the locations? The COURT.—Yes, that objection will go to all the testimony they attempt to put in as to the non-mineral character of the locations."

Assignment No. 8. Thereupon said L. O. Ray was further asked this question by plaintiffs on the stand:

> "Q. What was the result of your examination over that ground?" (Referring to the Midas and Evening Star ground.) "A. The only thing I see is the common country rock and dikes that run through all that part of the country."

Said question was asked and answered, and permitted by the Court over defendant's said objection to such line of testimony as incompetent and imma-

terial, and because the plaintiffs having relocated the ground, are estopped to deny the mineral character of the ground. To the action of the Court permitting said question and answer the defendant excepted and assigns the same as error.

Assignment No. 9. Thereupon said J. J. Healey was permitted to testify for the plaintiffs, over defendant's objections and exceptions aforesaid that before he made the Homestake location and posted the notice, he looked over the ground within the Midas and Evening Star and Homestake boundaries, to see if there was any different character of ground to his judgment, and found there was not; that he examined to see if there was any lode or mineral exposed on the ground; that he prospected it, panned all the different cuts, pounded up the rock, burned some of it, roasted and panned; that he got no results or colors, in the precious metals, and that there was nothing that he found on the ground, which based on his experience as a miner, would indicate a lode or vein. All of said testimony being admitted over defendant's said objections and exceptions as being incompetent, irrelevant and immaterial to the issues; and because plaintiffs are estopped by their relocation of the ground to deny its mineral character. The defendant now assigns the admission thereof as error.

Assignment No. 10. Thereupon the witness Robert L. Phillips was permitted [82] to testify for plaintiffs that after the location of the Homestake placer, and in October and November of 1913 he went over the ground embraced within the Home-

stake placer, the Evening Star and Midas boundaries to see if there was any vein or lode that might show ore. That he found the boundaries of the Midas and Evening Star; that he took rock samples from sundry cuts or excavations and other places on the said ground and turned the samples over to plaintiffs' attorney, examined the formation, color, etc., of the cut-crops and exposures and saw nothing in the nature of a vein or lode exposed on the ground. Said testimony was admitted over defendant's said objection and exception to the class of testimony as incompetent, irrelevant and immaterial, to the issues, and because the plaintiffs are estopped by their relocation of the ground to deny the mineral character thereof. Defendant assigns the admission of said testimony as error.

Assignment No. 11. Thereupon the witness W. J. Moran was permitted to testify for plaintiffs that he had gone over the ground within the Homestake, Midas and Evening Star boundaries, examined the formation in the cuts and openings and did not discover anything in the nature of a vein or lode disclosed therein or upon said lode locations. Said testimony was admitted by the Court over defendant's objection and exceptions thereto as incompetent, irrelevant and immaterial to the issues and because the plaintiffs are estopped by their relocation of the ground to deny its mineral character. Defendant assigns the admission thereof as error.

Assignment No. 12. Thereupon the witness Emmet D. Boyle was permitted to testify for plaintiffs that he spent part of two days on the ground

covered by the Homestake placer conflicts with the Midas and Evening Star, in November, 1913, together with the adjoining ground, and examined certain cuts or openings within said conflict ground, took certain rock samples from the ground, which were delivered to the attorney or the assayer, and that he did not find nor discover upon that ground what he would as a mining engineer or mining man, consider to be a vein or lode as a commercial proposition, which he would locate with the expectation of getting commercial returns, or which he as a mining man would consider worthy of work and development, within the boundaries of the lode claim, or with the expectation of [83] finding ore. Said testimony was admitted over defendant's objections and exceptions aforesaid to this line of testimony, as being incompetent, irrelevant and immaterial, and because the plaintiffs having relocated the ground are estopped to deny its mineral character. The defendant assigns the admission of said testimony as error.

Assignment No. 13. Said witness Boyle was further permitted to testify for plaintiffs that he took several rock samples No. 2, 3, 4, 5 and 6 from sundry points within open cut A, or cut "20" on Plaintiffs' Ex. "A," on the Evening Star. Sample No. 10, taken from tunnel "22" map A on the Midas. Those were the only samples I took for assays. Mr. Woodbury assayed them for gold, silver and copper. And the assay certificates showing assay values thereof as "None" on each sample except No. 10, and that No. 10 showed values of $1.46

per ton in gold and silver. Said assay certificates were marked Plaintiffs' Ex. "U" and "V," and admitted in evidence. Said testimony and exhibits were admitted over defendant's objections and exceptions thereto as incompetent, irrelevant and immaterial to the issues, and because the plaintiffs having relocated the ground are estopped to deny the mineral character thereof. Defendant assigns the admission of said testimony and exhibits as error.

Assignment No. 14. Thereupon Robert L. Phillips testified for plaintiffs in said trial that within the last two weeks he had been over the ground of the Salt Lake No. 3, Midas and Evening Star, and had taken 12 samples of the rock, of which the following were from the Midas and Evening Star: Sample No. 6 from the Midas shaft marked "21" on map, Plffs. Ex. "A." Sample No. 7 from the tunnel "22" on the Midas. Sample No. 8 from cut "23" on the Midas. Sample No. 9 from cut "20" on the Evening Star. Sample No. 10 from cut "24" on the Evening Star. With five other samples taken from the Salt Lake No. 3. Cuts refer to plaintiffs' map Exhibit "A."

Said testimony was given and admitted under and subject to defendant's said objections and exceptions as incompetent, irrelevant and immaterial, and because plaintiffs are estopped by their relocation of the ground to deny its mineral character. Said ruling admitting said evidence is assigned as error.

Assignment No. 15. Thereupon during said trial plaintiffs offered and [84] put in evidence their Exhibit "A-3," an assay certificate by Woodbury,

assayer, from said samples Nos. 6, 7, 9, 10, showing values per ton thereof in gold, silver and copper, of trace, trace, and O, respectively. Said exhibit was admitted in evidence over defendant's said objections and exceptions, as incompetent and irrelevant to the issues, and because the plaintiffs are estopped by their relocation of the ground to deny its mineral character. Said ruling admitting the exhibits is now assigned as error.

Assignment No. 16. During plaintiffs' rebuttal on the trial of said action, plaintiffs further offered and put in evidence their Exhibit "A–15," assay certificate of sample, by J. Healey, showing values per ton in gold and silver to be nothing, except sample No. 6–$1.23 per ton. Said assay certificate was admitted over defendant's said objection thereto and exceptions, as incompetent, irrelevant and immaterial, and because plaintiffs are estopped by their relocation of the ground to deny the mineral character thereof. Said ruling admitting said exhibit is now assigned as error.

Assignment No. 17. During the trial of said action, plaintiffs offered in evidence their Exhibit "M," purported copy of an alleged adverse, said to have been filed in the U. S. Land Office at Elko, Nevada, by Murray Scott, *Frank* J. Healey, George B. Thatcher and William Forman, protesting and adversing the application by defendant for patent for the Midas and the Evening Star lode mining claims, with sundry other claims, and claiming a great portion of the ground within the said Midas and Evening Star lode claims, as the plaintiffs' under their Homestake location, by discovery and

purchase, and setting out the field-notes of the alleged conflict therewith. Defendant objected to the admission of said exhibit "M," because it is not alleged in the complaint that the plaintiffs filed any such adverse, and said Exhibit "M" is not answerable to any of the allegations of the complaint. The Court overruled said objection, and defendant objected to the Court's ruling and now assigns the same as error.

Assignment No. 18. During the trial of said action, plaintiffs offered in evidence, their Exhibit "O," a receipt by the U. S. Land Office at Elko, Nevada, for $10 in connection with adverse, Plaintiffs' Exhibit "M" with [85] a notice to said Scott, Healey and Forman of the filing of said adverse, and requirement to begin an action in thirty days to determine the right of possession. Defendant objected to the admission of said Exhibit "O" for the same reasons and grounds given to the admission of Exhibit "M." Said objection was overruled by the Court. Defendant excepted to the ruling and now assigns the same as error.

Assignment No. 19. During the trial of said action, plaintiffs offered in evidence, their Exhibit "A-6," purporting to be a deed from Frank L. Reber to Gilbert C. Ross, George A. Cole, Ed. Malley and Guy C. Davis, for all the right, title and interest of said Reber, to the Homestake placer mining claim, dated May 24, 1915, and acknowledged on May 25, 1915, but not recorded and which contained no U. S. Revenue stamp attached. Thereupon the plaintiff's counsel obtained and attached

thereto a 10 cent U. S. Revenue stamp and cancelled said stamp and thereupon offered said deed in evidence. Defendant objected to the admission in evidence of said Exhibit "A–6" on the ground that it did not at the time of its execution nor at any time until the last few minutes have attached to it or cancelled, any U. S. Revenue Stamp as required by the Act of Congress known as the War Revenue Act, effective Dec. 1, 1914, and that it cannot now be validated, without following the procedure required by the Act itself; and upon the ground that said deed is not properly stamped as required by law, and with the stamps cancelled according to law. The Court overruled said objection and admitted said deed "A–6" in evidence with a ten cent U. S. Revenue Stamp attached thereto. Defendant excepted to said ruling and now assigns the same as error.

ERROR IN FORBIDDING PROPER CROSS-EXAMINATION OF PLAINTIFFS' WITNESSES.

Assignment No. 20. During the trial of said action, Robert L. Phillips testified for plaintiffs that within the last few weeks he had taken 12 rock samples from the ground in the Salt Lake No. 3, Midas and Evening Star lode mining claims, of which a portion only were in evidence in shape of assay certificates showing small value or no value. He was then asked by defendant on cross-examination:

"Now of the samples that are not in evidence, were there any that returned values in assaying?"

Plaintiffs objected to [86] this as not proper cross-examination because in chief the witness had not been asked about the values of the omitted samples, but only that he took them; unless it be shown the cuts or excavations were taken, were actually on the ground at the time of the location of the Homestake, Salt Lake No. 3 claim. The court sustained said objection and ruled:

"I do not think any discovery which was made on the ground subsequent to a valid location made by the plaintiffs can be of any value to you. If last week you went on Salt Lake No. 3, and discovered ore worth $1,000 a ton, I don't believe it would do you any good, if the plaintiffs made a valid discovery and location before you made this shaft. It is not a question whether mineral in the ground; the question is whether there was a discovery made, and if you discover anything there, no matter how rich, after a valid discovery and location by others, it does not avail you. For that reason I think the objection is well taken. I will allow you to question the witness as to any samples that were taken by him from openings or exposures that were in existence at the time these locations were made."

Defendant excepted to the ruling of the Court, and now assigns said ruling as error.

Assignment No. 21. Thereafter during the trial of said action, and throughout said trial, the defendant was, pursuant to said ruling of the Court, required and obliged to confine all his cross-examination of plaintiffs' witnesses and all his questions to his own witnesses, relating to the lode mineral character of the ground, in said Midas and Evening Star lode claims, to such openings and exposures, as he could show to be in the same condition at the time to which the questions related, as at the time when the alleged Homestake conflicting location was made by plaintiffs on Sept. 8, 1913. Which ruling and restriction by the Court of the examination and cross-examination by defendant, and the Court's rulings compelling the same, were duly objected and excepted to by the defendant, and he now assigns the same as error.

And for the purpose of pointing this assignment of error, defendant refers to the bill of exceptions filed of record in this action, and prays that the same may be taken and considered by the Court, as fully and to the same extent and effect, as if the same were incorporated herein. [87]

Assignment No. 22. Defendant then asked said Phillips on cross-examination:

> "Q. Do you know of your own knowledge that all these workings where you took the samples were in the same condition as they were when the placer claims were located? Ans. No they are not in the same condition."

Defendant moves that all the assay certificates be struck from the record, and taken from the evidence.

The Court declined or omitted to make such order. Defendant assigns the same as error.

Assignment No. 23. Thereafter defendant renewed his motion and moved the court to strike out all evidence as to values, particularly as to assays taken, because there has been no showing whatever that the condition was precisely the same at the time of the examination as at the time of the location of the placers.

The COURT.—I didn't intend to make the ruling that broad. Suppose at the time the placer was located, in shaft No. 21 for instance, there was a depth attained of 10 feet; since then we assume you have sunk the shaft to a depth of 40 feet; a sample taken within that ten feet would be admissible because the ground was exposed; a sample taken from the bottom of the shaft was taken from ground which was not exposed at that time, and it seems to me would be inadmissible.

Mr. SPRINGMEYER.—It *it* evidential of the fact of a prior discovery, if we show that at any time, whether since or prior to the location of the placers, there had been mineral discovered; and we say if your Honor rules that samples taken since the discovery or location of the placer claims is proof admissible to show there were no values and no mineral in place on the lode claims, then it would be admissible to show the contrary or opposite thereof.

The COURT.—That question is not presented. As I understand Gen. Thatcher don't intend to offer any assays made from claimed lode formations not

exposed prior to the place locations, and if he had put in anything of that kind, it is a matter of inadvertence. In your case it is for you to prove that there is mineral in the ground, and that before the placers were located you had discovered the mineral, and if the mineral was exposed at that time, we may safely presume if it was exposed in some of your workings that you had discovered it. I shall only admit assays, no matter when [88] taken, but taken from a surface exposed prior to or at the time of the placer locations. The defendant excepted to the ruling of the Court, and now assigns as error the Court's said rulings.

The COURT.—You have that exception. Your question is as to whether he had other samples. If he took samples from ground that was exposed, the ruling is that he must answer. If he took other samples from ground not exposed, my ruling is that he need not answer. And when you go into this matter again I think you better ask a question that will bring you strictly within the rule, or without the rule, as the case may be.

Assignment No. 24. Thereupon said witness Phillips testified that some of the cuts from which he took his rock samples have been changed somewhat since the location of the placers; that he took some of his samples from the old points; those in evidence from the old points as they existed at the time, but that witness was not in Copper Canyon when the placer claims were located, and knows only of any change made since November, 1913.

Defendant renews his motion to strike out the as-

say certificates and evidence concerning the values and samples. Plaintiff offers to connect up with the testimony of Mr. Healey that the ground on these cuts on November 22, or when he examined them the first time, that the cuts were in the same condition as they were when the placer claims were located.

The COURT.—If that matter is not proven, it will have to go out. Defendant assigns the failure or postponement to rule on the motion as error.

Assignment No. 24–A. During the trial of this action, in rebuttal, plaintiffs offered in evidence their Exhibit "G," reciting "Notice of Location" by Joseph Jurey and William T. Jurey, of the Yellow Jacket lode mining claim 1500 feet long by 600 feet wide, on March 11, 1907 in Copper Canyon, parallels the Eagle on the west, and joins Salt Lake No. 3 on the south.

Defendant objected to said Exhibit "G" on the ground that no foundation for its admission has been laid; that it is incompetent, irrelevant and immaterial, and not probative of any of the issues in this case; also because plaintiffs are precluded from introducing such evidence in rebuttal and could only offer same in chief; and because such evidence is not within [89] the issues of this case.

The Court overruled said objections, and admitted the exhibit and defendant excepted to the ruling of the Court, and now assigns said ruling as error.

Assignment No. 24–b. During the trial of this action, in rebuttal, plaintiffs thereupon offered in evidence their Exhibit "H," Location Certificate of the Yellow Jacket lode, reciting location of said mining

claim on March 10th, 1907 by Joseph Jurey and William T. Jurey, of same dimensions and description in detail referred to in Plaintiffs' Exhibit "G," discovery March 10, 1907, recorded April 26 and 29, 1907 in proper District and County Recorders' offices.

Defendant objected to Exhibit "H," on same grounds as to Exhibit "G" in preceding assignment, and because there is no reference to any permanent object or natural monument, and no sufficient description to identify the ground.

The Court overruled said objection and admitted the exhibit "H" in evidence. Defendant excepted to the ruling, and now assigns the same as error.

ERROR IN PRECLUDING PROPER AND LAWFUL QUESTIONS AND TESTIMONY ON BEHALF OF DEFENDANT.

Assignment No. 25. During the trial of said action, the defendant asked his witness Joseph Jurey on the stand this question:

> *A.* "Mr. Jurey, during the years that you were in the employ of the Company, state whether the men were paid for the work they performed on each of these claims, or whether they received wages for their general work?"

Plaintiff objected to said question as immaterial. The Court sustained said objection and ruled:

> "It is the character of your possession, not the amount you pay, which makes it adverse; it is immaterial that you have paid large sums of money on this and other claims."

Defendant excepted to the ruling of the Court, and now assigns the same as error.

Assignment No. 25–A. During the trial of said action, Defendant asked his witness Joseph Jurey, this question on the stand:

"Q. Do you know whether or not it was the idea of the management that the work on that [90] tunnel would develop or enhance the mineral value of the Evening Star claim?"

Plaintiffs objected to said question as to what the idea of the company was, or what the company thought. The Court sustained the objection, and defendant excepted to said ruling, and now assigns the same as error.

Assignment No. 26. During the trial of said action, defendant asked his witness Joseph Jurey this question on the stand:

Q. "Do you know whether that vein or ore body was believed by the management to run through the claims involved in this controversy?" The witness answered "Yes, sir."

Plaintiff objected to the question and moved to strike out the answer. The Court sustained the objection and struck the answer. Defendant excepted to the ruling and assigns the same as error.

Assignment No. 27. During the trial of said action defendant offered in evidence the monthly payrolls of his grantor the Glasgow & Western Exploration Co., for the period from April 30, 1898 down to August 1913, showing a monthly expenditure for labor alone on Salt Lake No. 3 and adjoining claims of the Copper Canyon Group of from $154 per month at the lowest, to and in excess of $2,000 per month, said payrolls being itemized by names, employment,

dates, rate per day and amount due, with signatures of the employees receiving said moneys, in columns, and the totals carried from month to month, and year to year, showing the labor expense per year, viz.:

| | | | |
|---|---|---|---|
| 1898..... | $12,526.27 | 1906..... | $ 1996.00 |
| 1899..... | 13,679.80 | 1907..... | 11,050.25 |
| 1900..... | 8164.90 | 1908..... | 6049.00 |
| 1901..... | 2005.00 | 1909..... | 12,596.75 |
| 1902..... | 2230.50 | 1910..... | 2555.00 |
| 1903..... | 1974.20 | 1911..... | 2555.00 |
| 1904..... | 1993.00 | 1912..... | 26,235.60 |
| 1905..... | 1822.00 | 1913..... | 14,037.65 |
| | | Total..... | $120,460.94 |

[91]

And said payrolls showing, among others these items:

| Noah Faubert. | | Guy Davis. | |
|---|---|---|---|
| Dec. 1912..... | $71.75 | Jan. 1913..... | $68.25 |
| Jan. 1913..... | 45.50 | Feb. 1913..... | 98.00 |
| | | Mar. 1913..... | 56.85 |

And plaintiffs admitted the witness Jurey, now on the stand, knows and will identify all the signatures upon the payrolls. Plaintiffs objected to the admission of said payrolls as incompetent, irrelevant and immaterial, and not tending to prove or disprove any of the issues in the case.

The COURT.—I am much inclined to think so. You have not proven the amount of work done; you have not offered to show what fractional portion of the work represented by this payroll was done on

these particular three claims, and I do not see it affords any assistance.

* * * We have no standard. Even though you show you paid out ten, fifteen, twenty, or even fifty thousand dollars for work during three or four years, you don't show that portion of that work was done on these claims, so that I can be determined what amount of your money was paid for the specific and exact work done on these claims.

Mr. SPRINGMEYER.—We have shown on the contrary, it is impossible to do that.

The COURT.—Then that is your misfortune. I cannot see where it would be of the slightest assistance; it simply adds to the record, and to the confusion. * * * I don't suppose there will be any question on the part of the plaintiffs but that the amount of work done on that group of claims exceeded one hundred dollars for each claim.

Mr. THATCHER.—Oh, no.

The COURT.—The question is not that the total amount of money which was expended, but how much was expended on these three claims, or how much was expended for the benefit of these three claims; and if it is to go in at all, it seems to me you had as well agree on that without putting in that immense record.

Mr. SPRINGMEYER.—I can segregate it, if that is the only objection; we have the whole thing segregated for each year—the amount of wages paid to the employees of the Company. That does not include any supplies [92] furnished; merely the wages paid to the men for labor on this group of claims. I make that offer, if the objection is to en-

cumbering the record. Plaintiffs renew and insist on their previous objection, whether it is segregated in years or not.

The COURT.—I will sustain the objection to the offer that is made, and you may take your exception. Defendant excepted to the ruling of the Court, and now assigns the same as error.

Assignment No. 28. During the trial of said action, defendant Joseph Ralph testified that he knew the cost of construction of the mill, leaching plant and other buildings and improvements placed on Salt Lake No. 3 Lode claim in 1912 by his grantors the owner thereof, because he paid the bills therefor himself. He was then asked:

"What was the cost?"

The question was objected to by plaintiffs as incompetent and immaterial, because the cost of the leaching plant was not mining development work.

Mr. SPRINGMEYER.—We contend the mill was built for purpose of working ores extracted in part from Salt Lake No. 3, Midas, and Evening Star, because they were part of a group of claims operated under a general scheme of development. Each year a certain amount of work was done, sometimes on a small scale, sometimes on a tremendous scale.

The Court sustained plaintiff's objection; defendant excepted to the ruling, and now assigns the same as error.

Assignment No. 29. During the trial, defendant Ralph was by his counsel asked this question on the witness stand:

"Q. Do you know what was the cost of building the road on the Salt Lake No. 3 in the year 1913?"

Plaintiffs objected to the question unless it be shown the road tends to develop Salt Lake No. 3.

Mr. SPRINGMEYER.—I think the showing is sufficient. The Court sustained the objection and ruled:

"It does not seem to me that was done for development of that claim, or that that was its purpose."

Defendant excepted to the ruling, and now assigns the same as error.

Assignment No. 30. Thereupon said defendant Ralph having testified that the mill was designed and erected at that point upon a general principle tending to the economic import of the whole group, and that any mineral whether [93] on Salt Lake No. 3 or the more distant claims of the group could not be dissociated from the erection of the mill and its purpose; the defendant thereupon renewed his offer to testify the cost of the mill. Plaintiffs renewed their objection on the ground it is not for the development of the claim within the statute. The Court sustained the objection. Defendant excepted to the ruling and assigns the same as error.

Assignment No. 31. During said trial defendant Ralph on the witness stand was asked by his counsel:

"Did you pay anything for the bunk houses and office buildings built on Salt Lake No. 3 in 1912?" Ans. "Yes, sir."

Plaintiffs object because they do not constitute

annual labor or development of a mine, nor improvements within the statute, unless used in connection with this mine. The Court sustained the objection and asked counsel:

"Your question is as to the value of the bunk-houses?" COUNSEL.—Bunk-houses and office buildings."

You may have your exception. Defendant excepted to said ruling, and now assigns the same as error.

Assignment No. 32. During the trial of said action Joseph Jurey testified for defendant that he knew about certain houses, an office, boarding-house and bunk-houses built on the Salt Lake No. 3 in 1912–1913 by defendant's grantor, the owner, and was asked regarding them:

Q. "What were they reasonably worth?"

Plaintiffs object to said question on ground it does not tend to show any development of the claims in question as mining claims. The Court sustained the objection, and defendant excepted to the ruling of the Court, and now assigns the same as error.

Assignment No. 32–A. During said trial, defendant offered in evidence an assay certificate of certain rock samples Nos. 6 and 7, taken by his witness Parker Liddell prior to Sept. 1913, from an open cut on the Evening Star lode claim, at point "20" on Plaintiffs' Ex. "A" ("60" on Defts. Ex. 5), for the purpose of showing mineral values in a vein or lode at that point, in gold, silver, and copper, of $0.10 and $1.95 per ton. Plaintiffs objected to said certificate, on the ground it is not shown the samples

were taken from a point in the cut or opening exposed at the time of the former trial.

The COURT.—Well, I will exclude those. You may have your exception. Defendant excepted on the ground it is proper and competent evidence, and of probative value. Defendant assigns said ruling as error. [94]

## ERROR IN REFUSING TO STRIKE FROM PLAINTIFFS' TESTIMONY.

Assignment No. 33. During the trial of this action, and at the conclusion of plaintiffs' evidence in chief, the defendant moved the Court to strike out from the record and the evidence, all portions of the testimony or evidence produced by the plaintiffs as to the absence of lodes, or the failure or inability of the witnesses to find or discover lodes or mineral-bearing rock in place, upon or within the Midas and Evening Star lode mining claims, upon the ground that said evidence or testimony is immaterial, irrelevant, insufficient and inadmissible, and does not follow or tend to prove any of the averments contained in the complaint, and is not directed to any question before the Court in plaintiffs case in chief. The Court overruled said motion to strike, and defendant excepted to the ruling of the Court on the grounds stated, and because the evidence offered is not within the issues as presented; also because the complaint does not state facts sufficient to constitute a cause of action, nor to warrant the admission of proof.

## ERROR IN OVERRULING DEFENDANT'S MOTION FOR NONSUIT.

Assignment No. 34. Upon the conclusion of plaintiffs' evidence in chief, on the trial of this action, defendant moved the Court for an order of nonsuit, on the following grounds, to wit:

1. That the complaint herein does not state facts sufficient to constitute a cause of action, or for an adverse; and fails to allege that the ground on which plaintiffs filed the Guy Davis location, was at the time thereof vacant, unoccupied or unappropriated public land of the United States; and fails to allege an adverse filed by plaintiffs in the land office.

2. Because sufficient facts have not been proved by the plaintiffs herein to entitle them to a verdict or judgment in their favor or any affirmative relief; and because plaintiffs' proof shows that they are entitled to no verdict, judgment or relief herein; and because insufficient facts have been proved to entitle the plaintiffs to go to the jury.

3. Because there is a fatal misjoinder of parties plaintiffs herein, and as shown by the evidence, some one or more of the plaintiffs had no interest [95] in the subject matter of the action at the time of the commencement of the action, and did not derive any title from the plaintiffs who at that time had any such title or right to protect. Some of the present plaintiffs have no interest in the alleged Homestake placer, and some of them are not represented in any adverse in the land office.

4. Because there is a defect and nonjoinder of necessary parties plaintiff.

5. Because the plaintiffs have not shown that the ground on which the Guy Davis location was located, was at the time of such location, vacant and unoccupied public land of the United States, but the proof shows the contrary.

6. Because the case made does not support the alleged adverse claimed to have been filed in the land office at Elko, Nev., as alleged in the complaint filed.

7. Because the plaintiffs are estopped to deny the mineral character of the ground upon which they filed their location in the case at bar.

8. Because the plaintiffs' evidence shows affirmatively that the lode locations with which their placer conflicts, were at the time of the making and filing of said placer, occupied and held by the defendant and his predecessors in interest through their employees and agents, etc.

9. There is a variance between plaintiffs' pleading and proof as to the nature of the estate and title sought to be protected in this action.

There was no wrongful ouster or detention by defendant shown by said evidence. The Court overruled said motion for a nonsuit. Defendant excepted to the ruling of the Court upon each of the grounds contained in said motion; and now assigns said ruling as error.

## ASSIGNMENT OF INSUFFICIENCY OF THE EVIDENCE.

Assignment No. 35. The defendant now assigns the following grounds of insufficiency of the evidence to support or justify the judgment and verdicts herein.

NO SHOWING OF VACANCY OR UNOCCUPANCY OF THE GROUND.

1. The evidence was insufficient to show that the ground included within the boundaries of the Homestake placer claim, was at the time of the location thereof, vacant, unoccupied or unappropriated public land of the United [96] States, subject to location.

2. On the contrary, the evidence shows affirmatively, positively and without conflict that at the time of such location or relocation of the ground on Sept. 5, 1913, the said ground was not vacant, unoccupied and unappropriated, but that the said ground was at said time actually held, occupied, claimed and owned by defendant's grantors, under location as the Midas, Salt Lake No. 3 and the Evening Star lode mining claims, and had been so held, occupied, owned and claimed for more than six years, duly staked, monumented, recorded and improved, with all the annual assessment work duly performed and improved, with all the annual assessment work duly performed and not subject to forfeiture; with valuable buildings erected and standing on the Salt Lake No. 3, including a mill, leaching plant, office building, bunk-houses, pipe-line, etc.; with sundry cuts and excavations, shafts and openings, old and new, made by the owners, costing many thousands of dollars, including recent development work; and with the original boundary monuments stakes still standing thereon to inform and warn trespassers; also one or more agents and employees of the owner residing and present on the ground,

and living in one of the houses on the Salt Lake No. 3 and having custody and dominion of all of said ground in said three lode claims, and of the improvements thereon on behalf of the owner, at the time of the alleged Homestake relocation of portions of each of said three lode claims.

3. The evidence shows affirmatively, positively and without conflict that during the summer of 1913, and prior to the alleged Homestake location under which plaintiffs make claim to the ground, the defendant Ralph, as agent of the then owners, had caused to be sunk down to bedrock, in the gulch, on each of said three claims, shafts which disclosed valuable alluvial gold, constituting an additional element of value to said lode claims. That the locators of the Homestake (Healey and Scott) then residing nearby, acquired knowledge of said "find" so made in said shafts by defendant, and thereupon entered on the said ground without the knowledge of defendant or of said owners, in his and their absence, and made further excavations to bedrock at points near to the defendant's openings and on defendant's grantors ground, and thereby uncovered the placer gold which they knew in advance and had learned would be found there, and they thereupon pretended to have "discovered" placer gold; and thereupon they pretended to locate or relocate the [97] said ground as the Homestake placer, across, and taking in a great part of said Midas, Evening Star, and Salt Lake No. 3 lode mining claims.

That said entry and attempted relocation was wrongfully, surreptitiously and unlawfully done by

said Healey and Scott, for the purpose and with the intention of depriving the owner of the said ground and of the placer values therein, and that they succeeded in extracting over $1,000 in placer gold from the ground, before they were stopped by injunction, as appears by their testimony.

4. The evidence shows affirmatively and positively and without conflict, that within the boundaries of said Midas and Evening Star, and Salt Lake No. 3 lode mining claims at sundry points, there exists lodes or veins of mineral-bearing rock in place, containing values in gold, silver and copper, sufficient upon which to base valid locations of the ground as such lode mining claims under the laws of the United States, and sufficient upon which to have entitled the locators of said Midas and Evening Star and Salt Lake No. 3 to make said locations at the time they were located on March 27, 1907 and Feb. 2, 1897, respectively, and sufficient upon which to entitle any subsequent owner in the chain of title, to hold the same as a lode mining claim. Also that there exists, and did exist in and upon the ground within the said three lode mining claims at the time of the alleged location or relocation thereof as the Homestake placer, certain old cuts, openings and shafts, half filled with dirt, wash, and accumulations from the hillsides above, with sage brush growing in the bottom, indicating that said shafts, openings, and excavations were quite old.

5. The evidence shows, that for the purpose of obtaining evidence upon which to destroy the prior Midas, Evening Star, and Salt Lake No. 3 lode lo-

cations, and to uphold a relocation of "jumping" of said ground, the said jumpers went upon said ground at a time or times unknown to defendant's grantors or their representatives upon the ground, and pretended to make a search for lodes or veins at and upon the surface of said lode claims, and in some of the half filled shafts and openings; but they never uncovered any of the surface soil, debris, or obstructions at any point, nor removed any of the dirt or wash from the hillside from out of the shafts, cuts, or openings [98] found on the ground, in which sagebrush had begun to grow and did not make any *bona fide* efforts to find a lode or vein; but notwithstanding the proved existence of lodes or veins at sundry points on said ground, containing mineral values in gold, silver and copper sufficient to sustain a discovery and locations of the ground, and other lodes or veins, the existence of which defendant offered to prove, said witnesses pretended not to have seen any lodes or veins on the ground, nor anything that they would locate as such (with certain exceptions in way of seams or fissures which they said might contain mineral value); but that not seeing any vein or lode, they took rock samples and had them assayed, also panned, without result.

6. That said relocation of the Homestake claim, occurred on Sept. 8, 1913, and that several alleged examinations and searches for lodes or veins by plaintiffs' witnesses and said relocators, occurred at or about the time, and for the most part after, the actual relocation of said Homestake claim, and was done in hostility to the prior lode location, and in

the effort and for the purpose of depriving the owners of the ground and to invalidate its locations, and not to sustain the same and were done nearly seven years after the time of the Midas and Evening Star location, and nearly seventen years after the Salt Lake No. 3 location, and without any knowledge on the part of the said witnesses of the original physical facts of said three lode locations, or of the original or subsequent showings or disclosures of mineral thereon, affecting the title to the validity of the said three lode locations.

7. The evidence shows without conflict that the Midas, Evening Star and Salt Lake No. 3 lode claims, are three of a group of about twenty contiguous lode claims, which has been owned and operated as a group of claims, for many years; that into the ground covered by said group, had been sunk or drifted extensive workings, shafts, tunnels, adits, crosscuts, drifts, etc., including one tunnel over one thousand feet long, and another three hundred feet long, some of the said workings intended to develop all of said claim, and some for portions thereof, and some for local development; that the buildings and excavations are of very large value, and necessarily cost many thousands of dollars, or hundreds of thousands. That the purchase price of the Salt Lake No. 3 with fourteen other claims of said group on April 9, 1898 was $60,000, [99] and of the Midas and Evening Star with three other claims on July 11, 1907 was $3,000. That most of the valuable buildings are on Salt Lake No. 3. That the value of said claim for placer purposes only is over $100,000;

and that enormous value belonging to the defendant, will be thus handed over to the claim jumpers, without considerations, if the verdicts of the jury are upheld.

PRIOR ACTUAL POSSESSION.

8. The evidence shows affirmatively and without conflict, that at the time of the making of the alleged Homestake location, the defendant's grantors were in actual possession of the ground covered thereby, by his agents and employees, houses, improvements, stakes and monuments, and recorded location certificates, holdings and claiming to hold and own the same under the Midas, Evening Star and Salt Lake No. 3 lode mining claims.

PRIOR RECORD AND GOOD FAITH.

9. The evidence shows that the Midas and Evening Star lode claims were located March 27, 1907, by Joseph Jurey and Wililam T. Jurey; and the Salt Lake No. 3 on Feb. 2, 1897, by J. H. Clive; that said lode locations were duly recorded, and by subsequent conveyances and connected chain of title of record came to be vested in the defendant, and that the latter acquired the same in good faith in reliance on the record. That the defendant and his grantors had highly improved the said property and made the same valuable.

10. That the plaintiffs had no investment what-

ever in the alleged Homestake location, but that they and their grantors and privies in interest had unlawfully taken from the ground more than $1,000 in placer gold, belonging to the defendant, before they could be enjoined from further depradations thereon.

MISJOINDER OF PLAINTIFFS.

11. The evidence does not show any joint or common estate, title, or right in all the plaintffs nor any joint or common right of action in all of the plaintiffs, in relation to the alleged Guy Davis lode or placer claim.

12. The evidence does not show any right, title or estate, in any of the plaintiffs, to the said Guy Davis location.

13. The evidence does not show that all of the plaintiffs are or were [100] represented in any adverse filed in any land office, or in support whereof this action was begun or prosecuted, some of the plaintiffs were not so represented.

14. Said evidence shows that some or all of the plaintiffs have no interest whatever in the alleged Guy Davis location.

VARIANCE.

15. The evidence does not support the complaint in this, that the complaint alleges a joint and common estate and right of action, but the proof shows that a portion of the plaintiffs, at most, have any

appearance of a claim or interest under the alleged Guy Davis location.

WRONGFUL OUSTER OR DETENTION.

16. This action was begun and prosecuted as an action at law, for possession, in the nature of ejectment, but the evidence does not show ouster of the plaintiffs, wrongful or otherwise, from the ground by the defendant.

17. The evidence does not show a wrongful or unlawful detention of the ground from the plaintiffs, by the defendant, at the time of the beginning of this action, nor at all.

18. The evidence shows that some of the plaintiffs never were upon the ground, and that none of the plaintiffs were ever in the possession of the ground, but that some of the plaintiffs made transient, unlawful and secret intrusions upon the ground, without the defendant's knowledge or consent.

DISCOVERY ON THE LODE CLAIMS.

19. There was no lawful evidence to show that a discovery or discoveries of lodes or veins of mineral-bearing rock in place, sufficient to sustain the prior lode locations, had not been made in each of them, prior to the time of the alleged Homestake relocation on the ground on Sept. 8, 1913.

20. The evidence shows sufficiently and affirm-

atively that such discoveries had been made in said lode claims, prior to the attempted relocation thereof under the Homestake placer claim.

ADVERSE POSSESSION BY DEFENDANT.

21. The evidence shows positively, affirmatively, and without dispute, that the defendant and his grantors, had been in the open, notorious, exclusive, adverse possession of said ground, under the Midas, Evening Star, and Salt Lake No. 3 lode locations, for more than two years each, prior to [101] the time of the attempted relocation of the ground by or under the Homestake placer, holding and working the same in the usual way in the vicinity thereof, which is sufficient to vest title and establish valid locations of said three lode claims, under U. S. Rev. Statute, Sec. 2332 and Nev. Comp. Laws, 1912, Sec. 4951.

22. That by virtue of such title and location by adverse possession the plaintiffs are barred of any inquiry relating to the regularity or sufficiency of the original acts of location, to initiate title and right of possession to said three mining claims.

NO TITLE OR RIGHT OF POSSESSION BY THE PLAINTIFFS.

23. The evidence shows affirmatively and without conflct that the plaintiffs never made a discovery within the grounds claimed under the alleged Home-

stake placer claim, but that they attempted to appropriate merely, that which they knew was there and had been already discovered and exposed by the defendant.

24. The evidence shows without conflict that all the placer values in the ground claimed to have been relocated upon and under the Homestake location, was within the Midas, Evening Star and Salt Lake No. 3 lode locations, and belongs to the defendant as owner of said three lode claims, and were not in law subject to entry, location, discovery or appropriation by the plaintiffs, or anyone else.

25. The evidence shows that the said J. J. Healey and Murray Scott entered upon the ground as trespassers merely, without shadow of legal right or authority, and that all their alleged acts of discovery and location are void, and that no title or right of possession of the ground was obtained by them thereby.

## ERROR IN REFUSING INSTRUCTIONS REQUESTED BY THE DEFENDANT.

Assignment No. 36. After the close of all the evidence, and prior to the argument to the jury, the defendant requested and moved the Court in writing to peremptorily instruct the jury to return a verdict in favor of defendant, in the following words, viz.:

> "The Court instructs the jury to find a verdict herein in favor of the defendant."

The defendant now refers to the bill of exceptions heretofore filed in this cause, and prays that for the purpose of [102] pointing the error herein complained of, the same may be considered herein incorporated in its entirety as fully as though herein reiterated in *haec verba.*

The Court at said time, overruled defendant's motion and request, and refused to instruct the jury as requested by defendant; and defendant excepted to such refusal, and now assigns the same as error.

Assignment No. 37. Prior to the argument to the jury, the defendant in writing requested the Court to give to the jury, the following instruction, viz.:

> "The Court instructs the jury that if you find from the evidence, that the defendant and his grantors had entered and held possession of the lode mining claim involved in these actions, and worked the same in the usual and customary way in the vicinity thereof, for a period of two years prior to the making of the placer locations of the plaintiffs, then the law presumes in aid thereof, that all the acts necessary to a valid location of said lode mining claims had been done and performed at the time of such mining locations, and that such possession (having the legal effect of a location under the law) is sufficient to give the defendant's grantors a lawful right to the possession of said mining claims, if

kept alive as required by law, as against the subsequent placer locations of the plaintiffs' grantors."

There was evidence without conflict that defendant's grantors had held possession of the ground in dispute under the Midas, Evening Star and Salt Lake No. 3 lode locations, in the usual way with mining claims in the vicinity thereof, with all annual labor performed, for more than two years prior to the alleged Homestake placer location, and of all facts covered by the instruction asked.

The Court denied said request and refused to give said instruction, to which the defendant called the Court's attention and excepted and now assigns said ruling as error.

Assignment No. 38. Prior to the argument to the jury defendant requested the Court in writing, to give the following instruction to the jury.

"The Court instructs the jury that proof of two years open, adverse, continuous and exclusive possession of lode mining lands under claims of right by a [103] claimant, as a lode mining location, and during such time working the same in the usual and customary way of working such mining claims in the vicinity thereof, has all the force and effect and is the full legal equivalent of all the acts and things necessary to be done to initiate a valid location

of such lode mining claim. And if you find from the evidence in this case, or these cases, that the defendant and his predecessors had been so in adverse possession of the Salt Lake No. 3, Midas and Evening Star lode mining claims, or either thereof, for such period of two years at any time prior to the attempted locations of the Homestake and Guy Davis placers, respectively, then the defendant's grantor or grantors, was a lawful locator by virtue of such adverse possession and working at the expiration of said period of two years, independent of any other act or acts of location."

There was evidence without conflict that defendant's grantors had held possession of the ground in dispute under the Midas, Evening Star and Salt Lake No. 3 lode locations, in the usual way with mining claims in the vicinity thereof, with all anual labor performed, for more than two years prior to the alleged Homestake placer location, and of all facts covered by the instruction asked.

The Court refused to give said instruction to the jury, to which ruling defendant duly excepted and called the Court's attention, and now assigns the same as error.

Assignment No. 39. Prior to the argument to the jury, defendant requested the Court in writing, that

the Court should give to the jury the following instruction, viz.:

> "The Court instructs the jury that it is not necessary to the exercise of lawful possession by the defendant and his grantors over the lode mining claims involved in this action, the Salt Lake No. 3, Midas and Evening Star, that they or their agent or employee should reside or retain continuously upon each of said lode mining claims during all of the time of such possession, but it is sufficient if the defendant or his grantors, his or their agent or employees, were in position to and did have such supervision, dominion or control over said mining claims as their nature admits of, and such as is usual and customary with the owners of like property in the vicinity thereof." [104]

There was evidence of supervision, dominion and control and improvements on the Midas, Evening Star and Salt Lake No. 3 lode mining claims by defendant's grantors, and of the other facts covered by this request.

The Court refused to give said instruction to the jury, to which ruling and omission defendant called the Court's attention and excepted, and now assigns the same as error.

Assignment No. 40. Prior to the argument to the jury defendant requested the Court in writing that

the Court should give to the jury the following instruction, viz.:

"The Court instructs the jury that if you find from the evidence that the defendant and his grantors were in possession under valid locations of their lode mining claims involved in these actions, either by way of adverse possession and working, or by virtue of a compliance with the laws for initiating such lode mining locations, that such possession relates to all the ground covered by and included within the exterior side and end lines of said locations as denoted by the boundary monuments upon the ground, relating to each claim respectively, during all the time that such possession continued, and not to any less portion of said claim or claims."

There was evidence of facts constituting a valid location and title, in each of the ways suggested in this request.

The Court denied said request and refused said instructions, to which defendant called the Court's attention and excepted, and now assigns the ruling as error.

Assignment No. 41. Prior to the argument to the jury, defendant requested the Court in writing that the Court should give to the jury the following instruction, viz.:

"The Court instructs the jury that if at the time of the initiation of the lode mining claims or locations herein involved by defendant's grantors or at any time thereafter prior to plaintiffs' placer locations, mineral-bearing rock in place was discovered on the said lode mining locations by the locators or owners thereof, but at some point not midway between the side lines thereof, but east or west from such center line, and the required amount of location work was performed thereon according to the law at the time thereof as elsewhere instructed, and the owners [105] held adverse possession of said claims according to the boundary monuments upon the ground for two years prior to plaintiffs' placer locations, then the Court instructs you that such adverse possession related to all the ground embraced within the exterior lines of said locations as monumented, and it is immaterial to the rights of the defendant and his grantors, where the point of discovery within such exterior lines, was or occurred."

The Court refused to give said requested instruction, to which defendant called the Court's attention and excepted, and now assigns such refusal as error.

Assignment No. 42. Prior to the argument to the jury defendant in writing requested the Court to give to the jury the following instruction, viz.:

"The Court instructs the jury, that if you find from the evidence that at the time of the entry and making by the plaintiffs or their grantors, of the Homestake placer and the Guy Davis placer, the defendant or his grantor, was in possession of the ground, or any portion thereof, covered by such placer locations of filings, under and by virtue of prior location or locations, as lode mining claim or claims, and the performance of annual labor or improvements thereon during the same or the preceding year according to the legal requirements as elsewhere herein explained to you, then you are instructed that the entry thereon and the making of said placer locations was unlawful and void, and the same were in law trespasses on the rights and possession of the defendant; that all their steps of alleged discovery of minerals, the posting or recording of notices, or the monumenting of said placers were ineffectual; and that the plaintiffs, and their grantors acquired no right whatever by reason of said placer locations."

There was evidence of actual prior possession of the ground in dispute herein by defendant's grantors, and of all the facts contemplated by this request.

The Court denied said request and refused to give said instruction, to which the defendant called the

Court's attention and excepted and now assigns said ruling as error.

Assignment No. 43. Prior to the argument to the jury, defendant in writing requested the Court to give to the jury the following instruction, viz.:

"The [106] Court instructs the jury that in case No. 1872 now on trial, involving the adverse of the owners of the Homestake placer against the patenting of the Midas and the Evening Star lode mining claims, the original plaintiffs who instituted the action, and purport to have filed the adverse in the U. S. Land Office, were J. J. Healey, Murray Scott, William Forman and George B. Thatcher.

That at the time of the opening of the trial herein, the following parties were upon plaintiffs' application, substituted as plaintiffs, viz.: George A. Cole, Ed. Malley, Gilbert C. Ross, J. J. Healey, Guy Davis, George B. Thatcher and William Forman.

The Court instructs you that unless each and all of the present parties plaintiff, last named, were either interested in said Homestake placer, as the owners of an undivided interest therein at the time when this action was begun on Sept. 30, 1914, and filed the adverse in the U. S. Land Office at Elko, Nev., in support thereof this action was begun; or else, that such of the present

above-named plaintiffs as were not original adversing plaintiffs have since this action was filed on Sept. 30, 1914, purchased or acquired an undivided interest in said Homestake placer mining claim, from one of said original plaintiffs who begun the action and filed said adverse, then none of the plaintiffs can recover in this action.

And if some of the present parties plaintiff aforesaid were either plaintiffs at the beginning of this action nor have purchased an undivided interest since said time, from one of the parties plaintiff at the beginning of the action who filed said adverse, you cannot find a verdict in favor of any one of the present parties plaintiff in this action."

There was evidence that some of the plaintiffs have no interest whatever in the alleged Homestake location, can trace none to the locators, and took no part in any land office adverse. Also evidence that none of the plaintiffs have such interest or standing under the location or adverse.

The Court denied said request and refused to give said instruction, to which the defendant called the Court's attention and excepted and now assigns said ruling as error.

ERROR IN INSTRUCTING THE JURY. [107]

Assignment No. 44. The Court erred in giving the following instruction to the jury:

"The locators of the placer claims, the Guy Davis and Homestake have each performed all of the acts necessary and required by the statutes of the United States and the laws of the State of Nevada in the discovery and location of a placer claim. If you find from the evidence and the instructions of the Court that no valid location was made on the Salt Lake No. 3, your verdict must be for the plaintiffs as to the Guy Davis placer. If you find from the evidence and instructions of the Court that no valid location was made on the Midas and Evening Star lodes, your verdict must be for the plaintiffs for the Homestake placer."

This was error, because the Court thereby assumed the validity of the alleged acts of discovery and location of the Homestake placer claim, which are contradicted by the evidence and the law of the case; ignored defendant's title and rights by adverse possession and prior actual possession of the ground; ignored the evidence of failure of proof of title and right of action in plaintiffs; misjoinder of plaintiffs and absence of wrongful ouster or detention by defendant.

The defendant objected and excepted to said instruction, and called the Court's attention thereto; and the defendant now assigns the giving of said instruction as error.

Assignment No. 45. The Court erred in giving the following instruction to the jury:

> "The laws of the United States require as one of the essential conditions of the making of a valid location of unappropriated public lands of the United States under the mining laws, a discovery of mineral within the limits of the claim, and the exclusive right of possession is conferred only on one who has made a valid location one of the essentials of which is a valid discovery. Prior to such discovery mineral land is in law vacant and open to exploration and location * * * The actual possession of the prior arrival will be protected to the extent needed to give him room for work, and to prevent probable breaches of the peace; but while he is thus protected his possession must yield to the actual location of a valid discovery made by one who has located peaceably, and neither clandestinely nor with fraudulent purposes. Parties may not go upon the public [108] domain and acquire the exclusive right of possession by the mere performance of act prescribed for location, in the absence of a valid discovery."

There was no evidence of facts to warrant this instruction; no evidence that defendant's rights were based on preliminary entry prior to discovery

or location, but the evidence was his rights rested on a perfected location and prior actual possession, also title by adverse possession for more than two years; there was no evidence that plaintiffs' entry was lawful or peaceable, but the evidence shows it was secret and clandestine, without the knowledge or consent of the owner or possessor of the ground. Because the Court should not instruct upon an hypothesis not presented by competent and conflicting evidence within the issues.

The defendant objected and excepted to said instruction, and called the Court's attention thereto, and the defendant now assigns the giving of said instruction as error.

Assignment No. 46. The Court erred in giving the following instruction to the jury:

"A competent person may go on the public domain of the United States with a *bona fide* intention of making a discovery of mineral and may define the boundaries of his claim by means of notice and monuments thereon, and so long as such locator is in the actual possession of his location so defined, endeavoring to make a discovery, he will be entitled to the peaceable possession of such claim as against one entering thereon as a trespasser; but in the absence of a discovery, should he permit another competent person to go peaceably upon the claim and

should such person make a valid discovery of mineral and locate the same, and in all things comply with the requirements as to monumenting, posting notice, and recordation, then such subsequent locator would acquire the title to such claim so located, subject only to the paramount title of the United States. Of course, it will be necessary for him to comply with all of the Nevada statutes and regulations, which fix the manner in which a claim shall be located."

This was error, because inapplicable, there being no evidence that defendant's grantors' prior possession rested on intention to locate and absence of discovery or that he or they permitted plaintiffs' grantors to go peaceably on the ground, or to make a discovery or location thereon; ignores defendant's [109] rights and title by adverse possession for over two years, and by prior actual possession of the ground; and the Court should not instruct but upon competent conflicting evidence within the issues.

The defendant objected and excepted to said instruction, and called the Court's attention thereto; and the defendant now assigns the giving of said instruction as error.

Assignment No. 47. The Court erred in giving the following instruction to the jury:

"It is not sufficient to constitute a discovery within the meaning of the requirements of the

law concerning lode claims that the locator would be willing to expend his time and money in developing it. Willingness, unless evidenced and followed by actual exploitation, would be a mere mental state, which could not be satisfactorily proved. The facts which are within the observation of the discoverer and which induced him to locate should be such as would justify a man of ordinary prudence not necessarily a skilled miner, in the expenditure of his time and money in developing the property."

This was error, because it ignores defendant's rights and title acquired by adverse possession of the ground for more than two years, and the actual prior possession thereof by his grantors; and is inapplicable to the facts in evidence on the subject of prior discovery by his grantors.

The defendant objected and excepted to said instruction, and called the Court's attention thereto; and the defendant now assigns the giving of said instruction as error.

Assignment No. 48. The Court erred in giving the following instruction to the jury:

"In order to constitute a valid discovery on a lode mining claim three elements are necessary: There must be a vein or lode of quartz or other rock in place; the quartz or other rock in place must carry gold or some other valuable mineral

deposit; and the two preceding elements, when taken together, must be such as to justify a prudent man in the expenditure of his time and money in the effort to develop a valuable mine. You are therefore, instructed that even though you may believe and find from the evidence that the grantors of defendant made a discovery of a vein or lode on the Salt Lake No. 3, yet if you further believe and find from the [110] evidence that such vein or lode so discovered did not carry gold or some other valuable mineral deposit in such quantities as to justify a prudent man in the expenditure of his time and money in the effort to develop a mine, then you will find the issues in favor of the plaintiffs. The same is true also of the Evening Star and the Midas."

This was error because it ignores defendant's rights and title acquired by adverse possession of his grantors for more than two years, and their actual prior possession thereof; and is inapplicable to the facts in evidence as to prior discovery by his grantors.

The defendant objected and excepted to said instruction, and called the Court's attention thereof; and the defendant now assigns the giving of said instruction as error.

Assignment No. 49. The Court erred in giving to the jury the following instruction:

"Practically the only attack which has been made on the placer claims is that they were located on ground not open to location at the time."

This was error because it minimizes to the jury an objection so serious and vital, that it went to the entire invalidity of the placer locations.

Defendant objected to said instruction, and excepted thereto; and assigns the giving thereof as error.

Assignment No. 50. The Court erred in giving to the jury the following instruction:

"Practically the only question involved is the question as to whether a valid discovery had been made by the lode locators prior to the time when the placer locators went on the ground."

This was error, because it suggests an element of invalidity of the lode locations not lawfully or properly arising upon the evidence. No evidence of want of valid discovery in the lode claims; ignores the evidence of invalidity of the placers, absence of title, interest and right of action in plaintiffs; misjoinder, and absence of wrongful ouster or detention by defendant. The defendant objected to said instruction, and excepted to the giving thereof, and assigns the giving thereof as error.

Assignment No. 51. The Court erred in giving the following instruction to the jury:

"In order to constitute a valid location of the Midas and Evening Star, it was necessary for the defendant, or his predecessors in interest, in this action to make a discovery within the boundaries of the claim." [111]

This was error because inapplicable to the evidence. The defendant objected and excepted to said instruction, and called the Court's attention thereto; and the defendant now assigns the giving of said instruction as error.

Assignment No. 52. The Court erred in giving the following instruction to the jury:

"The testimony offered with reference to the Yellow Jacket has some bearing on the location of the Midas; and it will be for you to examine that testimony, and determine whether the Yellow Jacket at the time when the Midas was located was a valid, subsisting claim, and whether it covered the ground, or a portion of the ground now included within the Midas and particularly whether it covered the discovery and the location point of the Midas; if it did, then that ground was not open to location at the time."

This was error, because there is no evidence of a conflict between the Midas and the Yellow Jacket, and no evidence of invalidity of the Midas by reason of the Yellow Jacket. The instruction was inap-

plicable to the evidence. The defendant objected and excepted to said instruction, and called the Court's attention thereto; and the defendant now assigns the giving of said instruction as error.

Specifications of particulars wherein the verdicts are contrary to and against the law.

Assignment No. 53. 1. That the general and special verdicts, and each thereof, are contrary to and against the law, in each and every one of the particulars wherein it has been above specified, under Assignment No. 1, that the evidence is insufficient to support, sustain or justify the verdicts.

2. That the said general and special verdicts, and each thereof in this case, are severally insufficient in form or substance upon which to base any judgment, or award any relief whatever against the defendant, or in favor of the plaintiffs herein.

3. That there is no finding therein of any facts or set of facts, sufficient upon which to enable the Land Department of the United States to determine which, if either, of the parties to this action are entitled to purchase the ground in dispute from the United States.

4. That the special verdict of the jury was fatally defective and insufficient, wherein the jury finds that there was no discovery of a lode within [112] the Midas made by defendant or his grantors prior to the date when the Evening Star Placer is alleged

to have been located, for that such finding is not within the issues, and does not support the judgment as to any conflict between the Midas and the Homestake Placer Claim.

Specifications of particulars wherein the judgments are contrary to and against the law.

Assignment No. 54. 1. That the judgment is against the law because the complaint herein does not state facts sufficient to constitute a cause of action, said complaint being insufficient in each of the particulars hereinbefore specified under Assignment No. 1.

2. That the judgment is against the law, because the evidence herein is insufficient to support, sustain or justify the same, in each of the particulars herein specified under Assignment No. 35.

3. That the judgment is contrary to law, because the same contains no sufficient findings of fact to inform and guide the Land Department of the United States in its determination as to which if either of the parties to this action are entitled to purchase the ground in dispute from the United States.

4. Because the evidence shows there is a fatal misjoinder of parties plaintiff in this action.

5. Because the jury's special verdict is fatally defective and insufficient as to the Midas lode mining claim and as to the prior discovery thereon.

6. Because the judgment and proceedings had

prior thereto by the Court, fail to give effect to defendant's title and right of possession of the ground acquired by adverse possession for the period of the State and Federal statutes of limitations, to wit, for two years and more.

Assignment No. 55. Error in refusing a New Trial. The Court erred in overruling defendant's motion and petition for a new trial, and defendant specifies as grounds and particulars, each of the errors hereinbefore assigned and in said motion or petition set forth. Defendant duly excepted to said error overruling and refusing a new trial, and now assigns the same as error.

WHEREFORE, the said defendant, Joseph Ralph, prays that the judgment of [113] the District Court of the United States in and for the District of Nevada, entered herein in favor of the plaintiffs and against the defendant, be reversed, and that the said District Court of the United States in and for the District of Nevada be directed to grant a new trial of this action, and to take such other steps therein, as this Court shall order and direct.

P. G. ELLIS,
208 Boston Bldg.,
Salt Lake City, Utah,
Attorney for Defendant.

[Endorsed]: No. 1872 at Law. In the United States District Court for the District of Nevada.

George A. Cole et al., Plaintiffs, versus Joseph Ralph, Defendant. Involving the Adverse of the Claimants of the Homestake Placer Against the Application for Patent of the Midas and the Even-Star Lode Mining Claims. Petition for Writ of Error and Assignment of Error. Filed December 18th, 1916. T. J. Edwards, Clerk. P. G. Ellis, 208 Boston Building, Salt Lake City, Utah, Attorney for Defendant and Petitioner. [114]

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*In the District Court of the United States, in and for the District of Nevada.*

No. 1872.

THE HOMESTAKE PLACER,

vs.

THE MIDAS and the EVENING STAR LODES.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GEO. B. THATCHER, GUY DAVIS, WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Petition for Writ of Error.**

To the Honorable E. S. FARRINGTON, District Judge, Honorable FRANK S. DIETRICH, District Judge, and the Honorable Circuit Judges of the U. S. Circuit Court of Appeals for the Ninth Circuit.

Comes now the defendant Joseph Ralph, and feeling himself to be aggrieved by the judgment and decree of the Court, rendered and entered herein in the District Court of the United States, for the District of Nevada, on the third day of June, A. D. 1915, says that in the said judgment and decree, and in the proceedings had prior thereto in this cause, certain errors were committed to his prejudice, which appear in detail from the assignments of error filed herewith.

That the operation of said judgment was suspended by the filing of a petition and motion for a new trial of this cause in said trial court on the third day of June, A. D. 1915, and that the Court heard argument upon and took said petition under advisement, and thereafter on the 11th day of December, A. D. 1916, overruled and denied the same.

WHEREFORE, this defendant prays a Writ of Error to the United States Circuit Court of Appeals of the Ninth Circuit, to review the said judgment of said District Court, and to remove this cause into [115] said Circuit Court of Appeals for the Ninth

Circuit of the United States, according to the laws of the United States in that behalf, for the correction of the errors so complained of; and that a transcript of the record, proceedings and documents upon which said judgment or decree was based, duly authenticated, may be sent into the said last mentioned Court sitting at San Francisco, California. That proper order be made relating to the security and supersedeas bond required of him, and that upon the giving of such bond, said Writ of Error be made to operate as a supersedeas, and that all further proceedings in said trial court may be ordered suspended, stayed and superseded until the final determination hereof upon review. And your petitioner will ever pray.

Dated this 12 day of December, A. D. 1916.

P. G. ELLIS,

Attorney for Defendant and Plaintiff in Error.

*In the District Court of the United States for the District of Nevada.*

No. 1872.

HOMESTAKE

vs.

MIDAS et al.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J, J, HEALEY, GEORGE B. THATCHER, GUY DAVIS, WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Petition for Appeal.**

To the Honorable E. S. FARRINGTON, District Judge, Honorable FRANK S. DIETRICH, District Judge, and the Honorable Judges of the U. S. Circuit Court of Appeals for the Ninth Circuit:

Comes now Joseph Ralph, the defendant above named, and feeling himself aggrieved by the judgment or decree of the Court rendered and [116] entered herein by the U. S. District Court for the District of Nevada on the third day of June, A. D.

1915, says that in said judgment or decree and in the proceedings had prior thereto in this cause, certain errors were committed to his prejudice, which appear in detail from the assignments of error filed herewith.

That the operation of said judgment or decree was suspended by the filing of a petition or motion for a new trial and rehearing by defendant in this cause and court on the third day of June, A. D. 1915, and that the Court heard argument thereon and took the same under advisement, and thereafter and on the 11th day of December, A. D. 1916, overruled and denied the same, according to the laws of the United States in that behalf, for the correction of the errors so complained of; and that a transcript of the record and proceedings and documents upon which said judgment or decree was based, may be sent into the said last mentioned court sitting at San Francisco, California. That proper order be made relating to the security and bond required of him on such appeal, and that upon the giving of such bond, said appeal be made to operate as a supersedeas, and that all further proceedings in said trial court may be ordered suspended, stayed and superseded until the final determination hereof upon review. And your petitioner will ever pray.

Dated this 12th day of December, A. D. 1916.

P. G. ELLIS,

Attorney for Defendant and Appellant.

*In the District Court of the United States for the State of Nevada.*

No. 1872.

THE HOMESTAKE PLACER,

vs.

THE MIDAS and the EVENING STAR LODES.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER, WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Order Allowing Writ of Error and Fixing the Amount of Supersedeas Bond. [117]**

Upon the motion of P. G. Ellis, attorney for the defendant herein, made this 18th day of December, A. D. 1916, and upon the filing of the said defendant's petition for the allowance of a writ of error intended to be urged by the defendant and upon the filing of the assignments of error by defendant.

IT IS ORDERED, and the Court hereby orders that a writ of error be allowed and that the amount of the supersedeas bond to be given by the defendant

upon said writ of error be and the same is hereby fixed at five thousand dollars ($5,000), and upon the giving of said bond all further proceedings in said trial court be suspended, stayed and superseded, pending the determination of said writ of error by the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated this 18 day of December, A. D. 1915.

WM. H. HUNT,

Circuit Judge U. S. Circuit Court of Appeals for the Ninth Circuit.

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*In the District Court of the United States in and for the District of Nevada.*

No. 1872.

THE HOMESTAKE PLACER,

vs.

THE MIDAS and the EVENING STAR LODES.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GEORGE B. THATCHER, GUY DAVIS, WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Order Allowing Appeal and Fixing Amount of Required Security.**

Upon motion of the defendant Joseph Ralph by his counsel, it is hereby ordered that an appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit, be and the same is hereby allowed and ordered, for review of the judgment or decree filed and entered herein by the District Court of the United State for the District of Nevada, on the third day of June, A. D. 1915; and that a certified [118] transcript of the record, testimony, exhibits, and all proceedings in said trial court, be forthwith transmitted to the said United States Circuit Court of Appeals of the Ninth Circuit.

It is further ordered that the bond on appeal be fixed at the sum of five thousand dollars the same to act as a supersedeas bond and also as a bond for costs and damages on appeal.

Dated this 18th day of December, A. D. 1915.

WM. H. HUNT,
Circuit Judge, 9th Circuit.

[Endorsed]: No. 1872. George A. Cole et al. vs. Joseph Ralph. Homestake vs. Midas et al. Order Allowing Appeal.

*In the District Court of the United States, in and for the District of Nevada.*

No. 1872.

THE HOMESTAKE PLACER,

vs.

THE MIDAS and the EVENING STAR LODES.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GEORGE B. THATCHER, GUY DAVIS, WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS, that we Joseph Ralph as principal, and the Aetna Accident and Liability Company (a corporation created and existing under the laws of Connecticut) as surety, are held and firmly bound unto George A. Cole, Ed Malley, Gilbert C. Ross, J. J. Healey, George B. Thatcher, Guy Davis and William Forman, Plaintiffs above named, and to their executors, administrators and assigns, in the penal sum of five thousand dollars ($5,000), for the payment which we bond

ourselves, and each of us, jointly and severally, firmly by these presents.

Sealed with our seals and dated this the 18th day of December, A. D. 1916. [119]

But the condition of the foregoing obligation is such that whereas the above-named defendant Joseph Ralph has prayed for and obtained a Writ of Error, to the United States Circuit Court of Appeals, in and for the Ninth Circuit, to review the judgment and decree filed and entered in the above-entitled cause in the United States District Court in and for the District of Nevada, on the third day of June, A. D. 1915, in favor of the plaintiffs above named, and against the said defendant.

NOW, THEREFORE, if the above-named Joseph Ralph, obligor herein, shall prosecute said Writ of Error, to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void, otherwise to be and remain full force and effect.

WITNESS WHEREOF, the above-named prin-

cipal and surety have executed these presents on the day and date above herein stated.

JOSEPH RALPH, (Seal)
Principal.

THE AETNA ACCIDENT AND LIABILITY COMPANY. (Seal)
By JNO. T. BRUNN,
Surety.
Resident Vice-President.

Attest: I. M. BURLINGAME, (Seal)
Resident Assistant Secretary.

Bond approved Dec. 22, 1916.
WM. H. HUNT,
C. J.

State of Utah,
County of Salt Lake,—ss.

On this 18th day of December, 1916, before me personally came Jno. T. Brunn, to me known, who, being by me duly sworn, did depose and say: That he resides in the city of Salt Lake; that he is resident Vice-President of the Aetna Accident and Liability Company, the corporation described in, and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said company; that he signed his name [120] thereto by like order; that he is acquainted with I. M. Burlingame; that he knows him to be the Resident As-

sistant Secretary of said company; that the signature of said I. M. Burlingame, subscribed to said instrument, is in the genuine handwriting of said I. M. Burlingame, and was thereto subscribed by like order of said Board of Directors, and in the presence of him, the said Jno. T. Brunn.

[Seal] CLARENCE E. RAYBOULD,
Notary Public.

My commission expires March 2, 1918.

At a regular meeting of the Board of Directors of the Aetna Accident and Liability Company, duly called and held on the 28th day of December, A. D. 1911, the following By-law was adopted:

ARTICLE 8, RESIDENT OFFICERS, ATTORNEYS IN FACT AND AGENTS.

Section 1. The President, any Vice-President or the Secretary may from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries, Attorneys in Fact and Agents to represent and act for and on behalf of the Company, and either the President, any Vice-President, the Secretary or the Board of Directors may at any time remove any such Resident Vice-President, Resident Assistant Secretary, Attorney in Fact or Agent, and revoke the power and authority given him.

Section 2. Resident Vice-Presidents may, subject to the provisions and limits named in their certificate of authority, sign and execute on behalf of the Com-

pany any and all bonds and undertakings and other writings obligatory in the nature of a bond, and may bind the Company thereby as fully and to the same extent as the President or any other officer could bind it; such bonds and undertakings, however, to be attested in every instance by a duly appointed Resident Assistant Secretary.

Section 3. Resident Assistant Secretaries may, subject to the provisions and limits named in their certificate of authority, affix the seal of the Company to and attest on behalf of the Company any and all bonds and undertakings and other writings obligatory in the nature of a bond, and may bind the Company thereby as fully and to the same extent [121] as the Secretary or any other officer could bind it; such bonds and undertakings, however, to be signed and executed in every instance by a duly appointed Resident Vice-President.

Section 4. Attorneys in fact may, subject to the provisions and limits named in their certificate of authority, execute and deliver and attach the seal of the Company to any and all bonds and undertakings and other writings obligatory in the nature of a bond on behalf of the Company, and any such instrument executed by any such Attorney in Fact when attested by any other Attorney in Fact shall be as binding upon the Company as if signed, sealed, and attested by any officer of the Company.

State of Connecticut,
County of Hartford,—ss.

I. R. W. Myers, of the Aetna Accident and Liability Company, have compared the foregoing By-law with the original thereof, as recorded in the Minute-book of said Company, and do hereby certify that the same is a true and correct transcript therefrom, and of the whole of said original By-law.

Given under my hand and the seal of Company, at Hartford, Conn., this 4th day of February, 1914.

[Seal] R. W. MYERS,
Secretary.

[Endorsed]: At Law. Original Bond. No. 1872. On Writ of Error and Supersedeas. Homestake vs. Midas and Evening Star. December 18, 1916. Amount, $5000. [122]

*In the District Court of the United States in and for the District of Nevada.*

No. 1872.

THE HOMESTAKE PLACER,

vs.

THE MIDAS and the EVENING STAR LODES.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GEORGE B. THATCHER, GUY DAVIS, WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS, that we, Joseph Ralph as principal, and the Aetna Accident and Liability Company (a corporation created and existing under the laws of Connecticut) as surety, are held and firmly bound unto George A. Cole, Ed Malley, Gilbert C. Ross, J. J. Healey, George B. Thatcher, Guy Davis and William Forman, plaintiffs above-named, and to their executors, administrators and assigns, in the penal sum of five thousand dollars ($5,000), for the payment of which

we bond ourselves, and each of us, jointly and severally, firmly by these presents.

Sealed with our seals and dated this the 18th day of December, A. D. 1916.

But the condition of the foregoing obligation is such that whereas the above-named defendant Joseph Ralph has prayed for and obtained an appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, to review the judgment and decree filed and entered in the above-entitled cause in the United States District Court in and for the District of Nevada, on the third day of June, A. D. 1915, in favor of the plaintiffs above named and against the said defendant.

NOW THEREFORE, if the above-named Joseph Ralph, obligor herein, shall prosecute said appeal to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void, otherwise to be and remain in full force and effect.

IN WITNESS WHEREOF, the above-named principal and surety have [123] executed these

presents on the day and date above herein stated.

JOSEPH RALPH, (Seal)
Principal.

THE AETNA ACCIDENT AND LIABILITY COMPANY, (Seal)
By JNO. T. BRUNN,
Surety,
Resident Vice-President.

Attest: I. M. BURLINGAME, (Seal)
Resident Assistant Secretary.

Bond approved Dec. 22, 1916.

WM. H. HUNT,
C. J.

State of Utah,
County of Salt Lake,—ss.

On this 18th day of December, 1916, before me personally came Jno. T. Brunn, to me known, who, being by me duly sworn, did depose and say: That he resides in the city of Salt Lake; that he is Resident Vice-President of the Aetna Accident and Liability Company, the corporation described in, and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so fixed by order of the Board of Directors of said company; that he signed his name thereto by like order; that he is acquainted with I. M. Burlingame; that he knows him to be the Resident Assistant Secretary of said company; that the signature of said I. M. Bur-

lingame, subscribed to said instrument, is in the genuine handwriting of said I. M. Burlingame, and was thereto subscribed by like order of said Board of Directors, and in the presence of him, the said Jno. T. Brunn.

[Seal] CLARENCE E. RAYBOULD,
Notary Public.

My commission expires March 2, 1918.

At a regular meeting of the board of directors of the Aetna Accident and Liability Company, duly called and held on the 28th day of December, A. D. 1911, the following By-law was adopted:

ARTICLE 8, RESIDENT OFFICERS, ATTORNEYS IN FACT AND AGENTS.

Section 1. The President, any Vice-President or the Secretary may from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries, [124] Attorneys in Fact and Agents to represent and act for and on behalf of the Company, and either the President, any Vice-President, the Secretary or the Board of Directors may at any time remove any such Resident Vice-President, Resident Assistant Secretary, Attorney in Fact or Agent, and revoke the power and authority given him.

Section 2. Resident Vice-Presidents may, subject to the provisions and limits named in their certificate of authority, sign and execute on behalf of the Company any and all bonds and undertakings and other writings obligatory in the nature of a bond, and

may bind the Company thereby as fully and to the same extent as the President or any other officer could bind it. Such bonds and undertakings, however, to be attested in every instance by a duly appointed Resident Assistant Secretary.

Section 3. Resident Assistant Secretaries may, subject to the provisions and limits named in their certificate of authority, affix the seal of the Company to and attest on behalf of the Company any and all bonds and undertakings and other writings obligatory in the nature of a bond, and may bind the Company thereby as fully and to the same extent as the Secretary or any other officer could bind it; such bonds and undertakings, however, to be signed and executed in every instance by a duly appointed Resident Vice-President.

Section 4. Attorneys in Fact may, subject to the provisions and limits named in their certificate of authority, execute and deliver and attach the seal of the Company to any and all bonds and undertakings and other writings obligatory in the nature of a bond on behalf of the Company, and any such instrument executed by any such Attorney in Fact when attested by any other Attorney in Fact shall be as binding upon the Company as if signed, sealed, and attested by any officer of the Company

State of Connecticut,
County of Hartford,—ss.

I, Norman C. Stevens, of the Aetna Accident and Liability Company, have compared the foregoing By-law with the original thereof, as recorded in the Minute-book of said Company, and do hereby certify that the same is a true and correct transcript therefrom, and of the whole of said [125] original By-law.

Given under my hand and the seal of the Company, at Hartford, Conn., this 29th day of December, 1913.

NORMAN C. STEVENS, (Seal)
Assistant Secretary.

[Endorsed]: Equity. No. 1872. Original Bond on Appeal. Homestake vs. Midas et al. December 18, 1916. Amount, $5,000. [125½]

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*In the United States District Court for the District of Nevada.*

No. 1872—AT LAW.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GEORGE B. THATCHER, GUY DAVIS and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Certificate of Clerk U. S. District Court to Transcript of Record.**

I, T. J. Edwards, Clerk of the U. S. District Court for the District of Nevada, hereby certify that the foregoing one hundred twenty-nine typewritten pages, numbered from 1 to 129, inclusive, is a full, true and complete copy of the record and all proceedings had and filed in the above-entitled action and court, which were not also entitled, filed or used in case No. 1873 tried together with this action, so far as specified in the praecipe of counsel included in supplemental transcript filed herewith. And that all of said record and proceedings entitled, filed or used in both actions No. 1872 and 1873 and not singly in either case, are included in the supplemental transcript attached to or sent herewith.

And that the same together with the original citation on appeal and citation upon error and writ of error, and also said supplemental transcript hereto annexed, constitute the return to said writ of error and appeal in this action. [126]

I do hereby certify that the cost of the foregoing record is $137.30, and that the same has been paid by the defendant herein.

And that uncopiable exhibits and offers of proof are certified and sent herewith as recited in certificate to supplemental transcript.

In witness whereof I have hereunto set my hand and affixed the seal of said court at my office in Carson City, Nevada, on this the 12th day of March, A. D. 1917.

[Seal] T. J. EDWARDS,
Clerk. [127]

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*In the District Court of the United States, in and for the District of Nevada.*

No. 1872.

HOMESTAKE

vs.

MIDAS and EVENING STAR.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEO. B. THATCHER, WILLIAM FORMAN,
Plaintiffs,

vs.

JOSEPH RALPH,
Defendant.

**Writ of Error.**

United States of America,—ss.

The President of the United States to the Honorable, the Justices of the District Court of the United States in and for the District of Nevada, GREETING:

Because in the records and proceedings, as also, in

the rendition of the judgment, of a plea which is in the said District Court before you, or some of you, between Joseph Ralph, Plaintiff in Error, and George A. Cole, Ed. Malley, Gilbert C. Ross, J. J. Healey, Guy Davis, George B. Thatcher, and William Forman, Defendants in Error, a manifest error [128] hath happened, to the great damage of the said Joseph Ralph, Plaintiff in Error, as by his complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all information concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the 22d day of January, 1917, in the said U. S. Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid, being inspected, the said U. S. Circuit Court of Appeals may cause further to be done therein, to correct such error, what of right and according to the laws and customs of the United States should be done.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States,

the 22d day of December, in the year of our Lord one thousand, nine hundred and sixteen.

[Seal] F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Allowed by:

WM. H. HUNT,
Judge.

Copy lodged in clerk's office for defendants in error this 23d day of December, 1916.

T. J. EDWARDS,
Clerk U. S. Dist. Court, Dist. Nevada. [129]

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*In the District Court of the United States, in and for the District of Nevada.*

No. 1872.

THE HOMESTAKE

vs.

THE MIDAS and EVENING STAR.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER, and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Citation on Writ of Error.**

United States of America,—ss.

The President of the United States to George A. Cole, Ed. Malley, Gilbert C. Ross, J. J. Healey, Guy Davis, George B. Thatcher, and William Forman, GREETING:

You are cited and admonished to be and appear at the United States Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco in the State of California within thirty days hereafter, pursuant to a writ of error filed in the clerk's office of the District Court of the United States in and for the District of Nevada, wherein Joseph Ralph is plaintiff in error, and you are defendants in error, to show cause, if any there be why [130] judgment rendered against said plaintiff in error mentioned, should not be corrected, and why speedy justice should not be given to the parties in this behalf.

WITNESS, the Honorable Wm. H. Hunt, United States Circuit Judge for the Ninth Circuit, this 22d day of December, A. D. 1916.

WM. H. HUNT,

United States Circuit Judge, for the 9th Circuit.

[131]

*In the District Court of the United States, in and for the District of Nevada.*

No. 1872.

THE HOMESTAKE PLACER

vs.

THE MIDAS and THE EVENING STAR LODES.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER, WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Citation on Appeal.**

The United States of America,—ss.

The President of the United States to George A. Cole, Ed. Malley, Gilbert C. Ross, J. J. Healey, Guy Davis, George B. Thatcher, and William Forman, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the city of San Francisco, in the State of California, within *thirty hereafter,* pursuant to an order allowing an appeal to the said U. S. Circuit Court of Appeals, 9th

Circuit, to review the judgment and decree of the District Court of the United States for the District of Nevada in favor of the plaintiffs and against the defendant above named, filed and entered therein on the third [132] day of June, A. D. 1915, then and there to show a cause, if any there be, why said judgment and decree should not be corrected, and why speedy justice should not be given to the parties in that behalf.

WITNESS the Honorable WM. H. HUNT, Judge of said U. S. Circuit Court of Appeals, 9th Circuit, on this the 22d day of December, A. D. 1916.

WM. H. HUNT,
Circuit Judge. [133]

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*In the United States Circuit Court of Appeals for the Ninth Circuit.*

No. 1872—In Court Below.

JOSEPH RALPH,
Appellant and Plaintiff in Error,

vs.

GEORGE A. COLE et al.,
Appellees and Defendants in Error.

**Order Extending Time to File Record on Appeal and Writ of Error, and Docket Cause.**

Good cause appearing therefor, it is ordered that plaintiff in error and appellant in the above-entitled

cause may have to and until February 12, 1917, within which to file his record upon writ of error and appeal and docket the cause in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this Dec. 18, A. D. 1916.

WM. H. HUNT,
Judge.

[Endorsed]: No. 1872. In the U. S. District Court for the District of Nevada. George A. Cole et al. vs. Joseph Ralph. Proceedings Upon Review. Petitions, Orders Fixing Amount of Bond, Bonds, Writs of Error, Citations Upon Error, Citations upon Appeal, Order Extending Time for Transcript. Filed by P. G. Ellis, Attorney for Defendant, Dec. 23, 1916, 208 Boston Bldg., Salt Lake City, Utah. T. J. Edwards, Clerk. [134]

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*In the U. S. District Court for the District of Nevada.*

No. 1872—AT LAW.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GEORGE B. THATCHER, GUY DAVIS and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Return of Service.**

I, A. B. Gray, United States Marshal for the District of Nevada, do hereby certify that I did on this the 4th day of January, A. D. 1917, serve the citation on writ of error and the citation on appeal by defendant, upon the plaintiffs in the above-entitled cause, by delivering a copy of each thereof to George B. Thatcher, personally, one of the attorneys of record for the said plaintiffs, in Carson City, Ormsby County, Nevada.

Witness my hand on this the 4th day of January, A. D. 1917.

A. B. GRAY,
U. S. Marshal for District of Nevada.

Fees for service, $4, paid by P. G. Ellis, Atty., for Joseph Ralph.

[Endorsed]: U. S. District Court, District of Nevada. Geo. A. Cole et al. vs. Joseph Ralph. No. 1872—At Law. Return of Service of Citations by U. S. Marshal. Fees, $4. Paid by Joseph Ralph. Filed January 8th, 1917. T. J. Edwards, Clerk. [135]

[Endorsed]: No. 2952. United States Circuit Court of Appeals for the Ninth Circuit. Joseph Ralph, Plaintiff in Error, vs. George A. Cole, Ed. Malley, Gilbert C. Ross, J. J. Healey, Guy Davis, George B. Thatcher, and William Forman, Defendants in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Nevada.

Filed March 14, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

No. 2952

# United States
# Circuit Court of Appeals
## For the Ninth Circuit.

JOSEPH RALPH,

Plaintiff in Error,

vs.

GEORGE A. COLE, ED MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER, and WILLIAM FORMAN,

Defendants in Error.

## CERTIFIED COPY OF BILL OF EXCEPTIONS, ETC.

Upon Writs of Error to the United States District Court of the District of Nevada.

At a stated term, to wit, the October term, A. D. 1916, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Tuesday, the sixth day of February, in the year of our Lord one thousand nine hundred and seventeen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable CHARLES E. WOLVERTON, District Judge.

Undocketed.

JOSEPH RALPH,

Appellant and Plaintiff in Error,

vs.

GEORGE A. COLE et al.,

Appellees and Defendants in Error.

Undocketed.

JOSEPH RALPH,

Appellant and Plaintiff in Error,

vs.

GEORGE A, COLE et al.,

Appellees and Defendants in Error.

**Order Extending Time to File Record and Docket Cause, etc.**

Upon consideration of application of counsel for Joseph Ralph, filed January 27, 1917, and good cause therefor appearing, it is hereby ordered that the time to file records and docket the above-entitled

causes in this Court be, and hereby is extended to and including March 7, 1917.

Upon consideration of the petition, filed January 4, 1917, and good cause therefor appearing, it is hereby ordered that the clerk of the District Court for the District of Nevada in preparing his certified transcripts of the records in these causes need not prepare or certify separately in each cause a copy of the said papers so entitled and filed or used jointly in both causes, but he shall certify separately as follows:

(a) In case No. 1872 all papers and proceedings entitled or filed exclusively in that case.

(b) In case No. 1873 all papers and proceedings entitled or filed exclusively in that case.

(c) In both cases Nos. 1872 and 1873, under one certificate, all papers filed or used in both cases as one paper, and not exclusively or singly in either case; which papers shall be complementary to and supplement those in clause (a) and also those in clause (b), *supra*, and shall be part of the transcript on review in each of said cases.

And the clerk of this Court, in printing the said record in this Court, shall cause sufficient printed copies of the joint papers mentioned in clause (c), *supra*, to be made, so that when combined and bound separately with the papers in clause (a), and with the papers in clause (b) respectively, there shall be a complete printed record in each cause. [1]

Upon consideration of Motion of counsel for Joseph Ralph, filed January 27, 1917, for leave to amend assignment of Errors in cause entitled Joseph

Ralph, Plaintiff in Error v. George A. Cole et al., Defendants in Error, District Court No. 1872, it is hereby ordered that the said Motion be, and hereby is granted, and that the Assignments of Error in said cause be, and hereby are amended as follows:

Assignment No. 3, strike out "Van Orman";

Assignment No. 35, paragraph 2, change Sept. 5, 1913, to Sept. *8*, 1913;

Assignment No. 1, par. (a), line 2;

Assignment No. 34. par. 1, line 3; and par. 5, line 2;

Assignment No. 35, pars. 11, 12, 14 and 15;

and in each thereof respectively, change "Guy Davis" to "Homestake" location.

Assignment No. 53, paragraph 1, line 4, change "1" to "35."

I hereby certify that the foregoing is a full, true and correct copy of an original order made and entered in the within-entitled order.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this sixth day of February, A. D. 1917.

[Seal] F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

[Endorsed]: 2 cases—Undocketed. United States Circuit Court of Appeals for the Ninth Circuit. Ralph vs. Cole et al. Filed February 8th, 1917. T. J. Edwards, Clerk U. S. Dist. Court, Dist. of

Nevada. Certified Copy of Order Extending Time to File Record and Docket Cause, etc. [2]

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*In the U. S. District Court for the District of Nevada.*

No. 1872—AT LAW.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GEORGE B. THATCHER, GUY DAVIS and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

and

No. 1873—AT LAW.

GEORGE A. COLE, ED, MALLEY, GILBERT C. ROSS, J. J. HEALEY, GEORGE B. THATCHER, GUY DAVIS and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Praecipe for Making Record.**

To Hon. T. J. EDWARDS, Clerk of said Court:

In preparing your certified transcript of the record to be sent to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, pursuant to the writ of error and appeal

taken, allowed and issued in each of the above-entitled actions, you are hereby directed to include in said transcripts the following papers, records, documents and items therein, which are necessary to the hearing in said appellate court, upon the errors assigned, to wit:

1. The summons, complaint, answer, reply, verdicts and judgment.
2. The petition, notice, bond and order of court upon removal of this cause from the Third Judicial District Court of Nevada into this court (omitting typewritten or printed copy of by-laws of Surety Company attached to said bond, which is unnecessary on review).
3. Stipulation of counsel as to assays of R. H. Officer & Co., dated April 23, 1915.
4. Stipulation of Counsel for trial of case before the Court and a jury, dated ——.
5. Bill of Exceptions, containing testimony at the trial, etc.
6. Endorsement on motion for new trial showing fact and date of filing of said motion for new trial.
7. Opinion or decision on motion for new trial, and order of the Court denying said motion for new trial, with date of filing and entry thereof.
8. Orders designating Hon. Frank S. Dietrich, U. S. District Judge for the District of Idaho to sit and hold Court in Nevada.

[3]

9. All petitions, orders, bonds, citations on appeal and citations on error, writ of error, with returns and proofs of service, assignments of error, all orders extending time for filing certified transcripts, order amending assignments of error in No. 1872, and order authorizing one copy of bill of exceptions and other papers jointly filed in both cases; and all other steps, papers and proceedings had or taken upon appeal or writ of error.

—in each of the above-entitled actions: Provided, that in preparing and certifying the transcripts in each and both of said cases, you will follow the order of the U. S. Circuit Court of Appeals as follows:

(a) In case No. 1872 you will prepare and certify a transcript of all the above papers and proceedings which are entitled and filed exclusively in that case in your office.

(b) In case No. 1873 you will prepare and certify a transcript of all the above papers and proceedings which are entitled and filed exclusively therein in your office.

(c) All papers and proceedings as above-entitled or filed and used jointly in both cases Nos. 1872 and 1873, you will include and certify in a separate transcript to accompany and be supplemental to transcripts (a) and (b), *supra,* respectively.

There are certain exhibits not copiable and offers of proofs not admitted in evidence, which you will certify the originals without copying according to the provisions of the stipulations of counsel attached

to and forming part of the bill of exceptions, and send to the Court of Appeals.

This Feb. 7, 1917.

P. G. ELLIS,

Attorney for Joseph Ralph, Appellant and Plaintiff in Error.

State of Utah,
Salt Lake County,—ss.

Aline Bruderer, being duly sworn, deposes and says she is of lawful age and not of kin or counsel to either of the parties hereto. That she served the foregoing praecipe upon George B. Thatcher one of the attorneys for defendants in error above named on this the 7th day of February, A. D. 1917, by depositing the same in a sealed envelope postage prepaid and addressed to said attorney at his P. O. address of Carson City, Nevada, and [4] depositing in the U. S. Postoffice at Salt Lake City, Utah.

A. E. BRUDERER.

Subscribed and sworn to before me this 7th day of February, 1917.

[Notarial seal] P. SCHULTE.

[Endorsed]: Nos. 1872–1873. U. S. District Court, District of Nevada. George A. Cole et al., Plffs., vs. Joseph Ralph, Deft. Praecipe. Filed February 9th, 1917. T. J. Edwards, Clerk. By H. D. Edwards, Deputy. [5]

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Pages 1 to 277.

No. 1872 and No. 1873.

Honorable E. S. FARRINGTON, Judge.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER, and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Transcript of Testimony.**

**Bill of Exceptions.**

Appearances:

MR. GEORGE B. THATCHER and MR. WILLIAM FORMAN, for Plaintiffs.

MR. GEORGE SPRINGMEYER and MR. P. G. ELLIS, for Defendant.

Filed July 30th, 1915.

T. J. EDWARDS,
Clerk.

[6]

*In the District Court of the United States, in and for the District of Nevada.*

No. 1872 and No. 1873.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER, and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

BE IT REMEMBERED that the above-entitled cases came on for trial on Tuesday, the 25th day of May, 1915, at 4 o'clock P. M., before the Honorable E. S. FARRINGTON, Judge of said court with a jury:

Mr. George B. Thatcher and Mr. William Forman, appearing as attorneys for plaintiffs; and Mr. George Springmeyer and Mr. P. G. Ellis, appearing as attorneys for defendant.

Whereupon the following proceedings were had and testimony introduced:

After a jury is impaneled and sworn, an adjournment is taken until Wednesday, May 26, 1915, at 10 o'clock A. M. [11]

Wednesday, May 26th, 1915.

Court convened, 10 o'clock A. M.

(All parties present.)

Mr. THATCHER.—If the Court will indulge me

just a moment, the title to the property, to both claims, the Guy Davis and the Homestake Placer, stands now in the names of the same parties, to wit, Guy Davis, J. J. Healey, George Cole, Ed. Malley, Gilbert Ross, William Forman and George B. Thatcher, and I move that the parties plaintiff in both actions be substituted to conform to the parties I have named.

Mr. SPRINGMEYER.—No objection to that, provided title in these gentlemen has been acquired since the institution of the actions, of course, which I assume to be the fact, otherwise there might be a defect of parties plaintiff.

The COURT.—Do I understand, then, that the substitution is made, and that it is agreed by both parties that it shall be made?

Mr. SPRINGMEYER.—Yes, but of course we cannot tell whether there is a defect of parties plaintiff until we have their record evidence of title; and in the event it appears that these men who are substituted have acquired their title since the institution of the suits, then we have no objection on the formal ground of substitution; that is to say, we reserve the right to object to any evidence that may appear, and any defects in the parties plaintiff that may appear, by virtue in whom the title was prior to the institution of the suits.

The COURT.—Very well.

Mr. THATCHER.—So far as new parties are concerned, I have the record here for the examination of counsel. [12]

Mr. SPRINGMEYER.—I, of course, assume there

is nothing, but out of an abundance of caution, we must reserve our rights.

IT IS STIPULATED, by and between respective counsel that both cases be tried together, and that the testimony given shall be considered in each case, so far as it is relevant, competent and material; that the jury shall render a verdict in each case, and that separate judgments shall be entered in each counsel for defendant reserving the right to make all objections or exceptions to pleadings or evidence, or to any proceeding, which they might have in either case, if tried separately.

(The opening statement on behalf of the plaintiffs is made by Mr. George B. Thatcher, counsel for defendant reserving the right to make their statement until the opening of defendant's case.) [13]

**Testimony of W. J. Moran, for Plaintiffs.**

Mr. W. J. MORAN, called as a witness on behalf of plaintiffs, after being sworn testified as follows:

Direct Examination by Mr. THATCHER.

Q. What is your full name?

Mr. ELLIS.—If the Court please, before proceeding, the defendant in each of these cases objects to the introduction of any evidence by the plaintiffs upon the ground that the complaint does not state facts sufficient to constitute a cause of action. We wish to enter that formal objection before any evidence is taken.

The COURT.—Do you care to argue it?

Mr. ELLIS.—No.

Mr. SPRINGMEYER.—We just want to make the formal objection.

(Testimony of W. J. Moran.)

The COURT.—If you make a formal objection I shall make a formal ruling overruling it.

Mr. ELLIS.—Exception for the defendant.

Mr. THATCHER.—(Q.) Your full name is W. J. Moran? A. Yes.

Q. Where do you reside, Mr. Moran?

A. Tonopah, Nevada.

Q. How long have you lived in Tonopah?

A. About ten years.

Q. What is your business or occupation?

A. Mining engineer and U. S. Mineral Surveyor.

Q. How long have you followed that occupation?

A. About fourteen years.

Q. Where did you receive your education?

A. University of Nevada.

Q. At Reno? A. Yes, sir.

Q. And since your graduation you have continuously followed that profession? A. Yes. [14]

Q. Where have you practiced your profession, Mr. Moran?

A. Butte City, Montana, and California.

Q. How long in Butte City? A. Four years.

Q. And after that?

A. In different parts of California and Nevada.

Q. Where in Nevada?

A. Oh, pretty generally all over the State.

Q. Pretty generally all over the State?

A. Yes, sir.

Q. Do you know the Copper Canyon in Battle Mountain Mining District, Lander County, this State? A. Yes, sir.

(Testimony of W. J. Moran.)

Q. Have you made any examination of the ground there, and made any surveys recently?

A. Yes, sir.

Q. At what time?

A. On the 14th and 15th of the present month.

Q. The 14th and 15th of this present month?

A. Yes, sir.

Q. Did you make any surveys of the ground in that district? A. I did.

Q. Of what claims?

A. Of the Salt Lake No. 3, the Midas, the Evening Star, the Homestake Placer, and the Guy Davis Placer.

Q. You made a survey of that ground?

A. I did.

The COURT.—(Q.) What date was that?

A. It was made on the 14th and 15 of the present month, this year.

Mr. THATCHER.—(Q.) Have you prepared a plat or map of that survey?

A. Yes, sir.

Q. Is this the plat or map (showing)?

A. Yes, sir.

Q. Prepared by you? A. Yes, sir.

Q. What do the black lines as indicated upon this map represent?

A. They represent the lines of the Salt Lake No. 3, the Midas, and the Evening Star lodes. [15]

Q. As shown all through the map? A. Yes, sir.

Q. And what do the red lines represent?

A. They indicate the exterior boundaries of the

(Testimony of W. J. Moran.)

Guy Davis and Homestake placers.

Q. Is this prepared from the notes you took from the actual survey of the monuments upon the ground? A. Yes, sir.

Q. Have you placed anything else upon the map, Mr. Moran?

A. Other than the lines of these surveys?

Q. Yes? A. Yes, sir.

Q. What does the black line running down in this direction represent—waiving line?

A. It represents the main wagon road running up the gulch.

Q. The main wagon road? A. Yes, sir.

Q. And the other one joining to it near the top of the map?

A. That is the road that connects with the main wagon road, and runs to the mill.

Q. Is this point on here marked "Mill,"—is that the mill on the ground? A. Yes, sir.

Q. Is that correctly located on the map with reference to its location on the ground? A. It is.

Q. I notice you have on here C, D, E, F, G, N, M, L and K, marked with little blocks upon the plat, what do they represent?

A. They represent buildings.

Q. Buildings upon the ground? A. Yes.

Q. And they are properly located, are they?

A. Yes.

Q. From actual survey made upon the ground?

A. Yes.

Q. You also have figures, 1, 2, 3 and continuing

(Testimony of W. J. Moran.)

right straight on down through the map, what do the figures denominate?

A. They represent mining improvements, shafts, cuts and so forth. [16]

Q. Excavations of some kind? A. Yes, sir.

Q. Have you shown on this map the points of discovery, or claimed discovery, as located upon the ground? A. Yes, sir.

Q. And did you find monuments at all of these points of discovery? A. I did not.

Q. At which point of discovery did you not find any monument?

A. Point of discovery on the Salt Lake No. 3.

Q. There is no monument at that point?

A. No, sir.

Q. How did you arrive at that point?

A. I had access to the official notes of the Survey No. 4175; the plat showed the tie from corner two of that survey to this approximate discovery shaft.

Q. You took that from the official survey?

A. Yes.

Q. Have you examined the official survey in the application for patent? A. Yes, sir.

Q. Do the lines of the Salt Lake No. 3, the Midas and Evening Star as delineated upon this map conform to the official survey? A. Yes, sir.

Q. Have you examined the adverse notes, the notes prepared and filed with the adverse?

A. Yes, sir.

Q. And do the lines of the Guy Davis placer and

(Testimony of W. J. Moran.)

the Homestake placer conform to the adverse notes and conflict notes, as shown in the adverse?

A. Yes, sir.

Q. Then this represents the conflict between the application for patent and the patent notes, and as delineated and shown in the adverse filed in the register's and receiver's office? A. It does.

Q. At the point marked "Discovery Monument Midas Lode," did you find any monument there?

A. Yes, sir.

Q. What kind of a monument was it?

A. It was a four-inch white painted post.

Q. A four-inch white painted post. A. Yes.

[17]

Q. Did it have any marks on it? A. Yes, sir.

Q. At the point marked "Discovery monument, Evening Star Lode," did you find a monument there?

A. Yes, sir.

Q. What was the character of that monument?

A. That was a similar post, four by four, white painted post.

Q. How was it marked?

A. I believe it was marked "Location Discovery Evening Star Lode."

Q. What are the directions on this map?

A. North is looking straight up the map; that long black line is a section line that runs practically north and south.

Mr. THATCHER.—That is all I want to prove at this time by this witness. I will put him on the stand again; but in order that the jury and other

(Testimony of W. J. Moran.)

witnesses might have the benefit of the map, I wanted to identify it. I desire to offer the map in evidence, if the Court please.

Mr. SPRINGMEYER.—Let me examine him before you offer it.

Q. I believe you testified, Mr. Moran, that on this map you represent all the workings on these claims?

A. I believe I do; there may be a drift or two at the bottom of some of the shafts; I didn't have access to the shafts; I measured the depth of them, however, but I was unable to show the drifts.

Q. Is is not a fact, Mr. Moran, that there is a shaft in the southwestern part of the Salt Lake No. 3 claim which is not represented upon the map?

A. I don't think there is, I think everyone is shown there.

Q. Is it not a fact there is a shaft in the northwestern part of the Midas claim, which is not represented on that map?

A. There is a small excavation there, I didn't consider it a shaft; it seemed to be an excavation that may have been meant for a cellar, or something of that kind, it was pretty well filled; [18] I noticed it at the time, but I didn't consider it worth locating. That map is drawn on quite a large scale. Those shafts which appear to be a considerable distance from the corner are quite close to it.

Q. Is it not a fact that there is another shaft very close to the boundary, between the Midas and the Salt Lake No. 3, on the Salt Lake No. 3 ground, which is not represented on your map?

(Testimony of W. J. Moran.)

A. No, there is not; I believe those two shafts you have in mind are the two that are shown there; in fact, they are quite close to the corner; that map is drawn on a scale of five feet to the inch, so that first shaft would be possibly a hundred feet from the corner.

The COURT.—(Q.) You say they do appear there?

Mr. SPRINGMEYER.—They do not appear there.

The COURT.—(Q.) Was that your understanding, Mr. Moran?

A. Why, they do appear, as I understand it; I have located every shaft, I think, in that neighborhood, and placed it on the map.

Mr. SPRINGMEYER.—(Q.) It may be, Mr. Moran, that I don't understand the markings of your map. Do the numbers all indicate shafts?

The COURT.—Perhaps you can show them there on the map.

(Witness goes to map.)

A. This here, for instance, is a shaft; this black spot here is a shaft, indicated by number 12; this is also a shaft indicated by number 11.

Mr. SPRINGMEYER.—(Q.) Then all the shafts or workings on these claims are represented by numbers on the map? A. Yes, sir.

Q. And isn't it a fact, Mr. Moran, that there is a shaft in the northwestern part of the Midas claim which is not represented upon that map?

A. Well, as I have already stated, there is an ex-

(Testimony of W. J. Moran.)

cavation [19] here which I did not consider was a shaft; it looked as though there had been an excavation made for a cellar, or something of that kind; it was pretty well filled; it is quite close here; it is quite a narrow affair, probably four feet deep, or some such matter; I thought that was probably a cellar, and I didn't locate that; that is very close to the corner.

Q. Is that a number (indicating on map)?

A. That is a letter; the buildings are all lettered.

Q. What does one represent here?

A. That is the letter "i."

Q. Does that represent a shaft?

A. That is a building; the shafts are represented by the dark spots; this, for instance, is a cut (indicating on map); these are shafts represented in this manner—the black spots.

Q. Mr. Moran, on the map, you don't represent the extent of the workings as to depth or length, or width, do you?

A. Yes, as to depth I do; I measured the depth of the shafts, but I don't show the drifts.

Q. Well, the map does not show the depths or the width, does it, in feet or inches?

A. Not on the map; I prepared a list giving all the depths and dimensions.

Q. You represent a fifty-foot hole, shaft, or wall near the center of Salt Lake No. 3?

A. Yes, sir, I believe that is number 29.

Q. How many days did you spend surveying these claims?

(Testimony of W. J. Moran.)

A. Why, I think it was about two days and a half.

Q. Did you go over every foot of the ground practically? A. Oh, yes.

Q. Or did you only make a rough going over?

A. It was done very accurately—went over it thoroughly. [20]

Q. You said you were unable to discover a discovery monument or any discovery work at the point on the Salt Lake No. 3 represented by the location notice; that is the fact, is it not?

A. Yes, sir—represented by the patents—patent plats; I had access to the patent plats, and checked up the position as indicated on the patent plats.

Q. Mr. Moran, is it not a fact that the point indicated by the patent plats is in the wash of the canyon? A. Yes, sir.

Q. Isn't it a fact that the surface indications there are such that any discovery work or any monuments which might have been put up years ago, might well have been obliterated entirely?

A. Oh, no, no; there is considerable brush around there; if there had ever been a monument there I am satisfied there would have been some indication of it.

Q. It is in the wash of the canyon, is it not?

A. Yes, sir.

Q. Isn't it a fact that the country thereabouts indicates considerable float and wash, and that it might have been subject to water, and cloudbursts, and so forth.

A. Yes, if there had been a monument there some

(Testimony of W. J. Moran.)

years ago, any evidence of that may have been destroyed.

Q. If a monument were erected at that point in the year 1897, would you say that it would be impossible from the location and surface conditions for that to have been entirely obliterated by any act of nature, such as a cloudburst in the canyon, or work of that sort?

A. Well, I could not say; if it was there for eight or ten years, it possibly might be obliterated.

Q. Frequently that happens, does it not?

A. Yes, sir.

Q. It is very seldom that a monument or discovery work can be found after ten or fifteen years on a mining claim in the State of Nevada, isn't it?

A. Oh, no; as a general rule it is very easy to identify or determine discovery work, for thirty or forty [21] years possibly, unless it is right in the wash, or subject to cloudbursts, or something of that kind.

Q. Did you make any examination of the region close to that point?

A. I was over it quite a few times.

Q. Did you examine within a hundred feet of that point, on all sides? A. Yes, sir.

Q. Isn't it a fact, Mr. Moran, that it would be practically impossible for a surveyor to accurately go over all the surface included within the survey you made, within the space of two days and a half?

A. Oh, no, not at all.

Q. Do you say there could not possibly have been any discovery monument or discovery work any-

(Testimony of W. J. Moran.)

where on the Salt Lake No. 3 claim which you did not find?

A. Oh, that may be possible, it is not very likely; I was looking for those kind of things, and I went over the ground very carefully.

Q. Mr. Moran, would you say there is not a location monument on the Salt Lake No. 3 claim at a point approximately one hundred and twenty-five feet from the east side line and approximately three hundred and twenty-five feet from the north end line?

A. Why, there is not anything there that I could identify as the discovery monument of the Salt Lake No. 3.

Q. Is not there a location post there which might have been a discovery monument?

A. There is a post that stands practically in that cut number 2.

Mr. THATCHER.—(Q.) Did you say that cut number 2? A. Number 2.

Mr. SPRINGMEYER.—(Q.) You would not say that post had not by some means been carried from the point represented by the patent plat, would you?

A. Oh, I could not say as to that.

Q. It was not fixed in the soil or in the rock in such a manner?

A. No, as I recall it, it was standing on the edge of that cut; [22] I don't think it had any monument around it whatever, any mound of rock; it had a few rocks there.

Q. It might have been carried there, or it might

(Testimony of W. J. Moran.)

have been the place it was for a number of years, isn't that a fact?

A. Oh, it might have been, I could not say as to that.

Mr. SPRINGMEYER.—That is all.

Mr. THATCHER.—I offer the map.

Mr. SPRINGMEYER.—We have no objection to the introduction of the map, except as to its accuracy. We believe it ought to be admitted, and submitted to the Court and the jury for what it is worth.

The COURT.—It will be admitted then.

(The map is marked Plaintiffs' Exhibit "A.")

Mr. SPRINGMEYER.—Just one question: (Q) In the space of two days and a half did you tie all these corners, and all the points from which you made your survey? A. I certainly did.

Mr. THATCHER.—I want to withdraw this witness at this time, and I will present him again later. The examination took a little further turn than was my intention.

The COURT.—If there is no objection you may.

Mr. SPRINGMEYER.—No objection.

The COURT.—As I understand it, this direct examination is intended to cover only the identification of the map; that was all it was intended for?

Mr. THATCHER.—Yes. [23]

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**Testimony of D. S. Van Orman, for Plaintiffs.**

Mr. D. S. VAN ORMAN called as a witness on behalf of plaintiffs, after being sworn, testified as follows:

Direct Examination by Mr. THATCHER.

Q. What is your name?

A. D. S. Van Orman.

Q. What is your business?

A. Mining and prospecting.

Q. Where do you live at the present time?

A. I have been living in Goldfield this winter.

Q. Along in August, September, October and November, 1913, where did you live?

A. I was in Copper Canyon at the time.

Q. Copper Canyon, Battle Mountain Mining District, Lander County in this State? A. Yes, sir.

Q. What were you doing in there?

A. Prospecting and looking around.

Q. Did you prospect the gulch of Copper Canyon?

A. Yes.

Q. What did you do in that gulch?

A. I discovered some placers—made a location.

Q. What date was this?

A. That was on September 5th, I made the location.

Q. What did you do?

A. I proceeded to monument the ground, digging a hole.

Q. You said you discovered placer there, what was the nature of the discovery, explain it to the jury.

(Testimony of D. S. Van Orman.)

A. Well, it consisted of placer gold in gravel in sufficient form to justify the exploitation of the ground down to bedrock, which I did later on with good results.

Q. Did you pan it? A. Yes, sir.

Q. And what did you find in the pan?

A. I found gold.

Q. How much gold?

A. The gold on the surface was light, but in bedrock it was in paying quantities. [24]

Q. After you discovered this did you say you made a monument, and posted a notice upon the ground?

A. Yes.

Q. After posting the notice what did you do?

A. I monumented the ground.

Q. What did you call the claim, do you remember?

A. The Guy Davis Placer.

Mr. SPRINGMEYER.—I object to the introduction of any evidence pertaining to the location of these claims, or the discovery of mineral upon either of them, until a proper foundation has been laid, and until it is first shown that the ground was at the time unoccupied and unappropriated public land.

Mr. THATCHER.—That is the controversy.

The COURT.—If he fails to make good that proof his testimony will be stricken out, but I shall allow him to prove his case in his own way. If he fails to make the proof, it will be subject to a motion to strike.

Mr. SPRINGMEYER.—We take an exception on the grounds stated in the objection, to all that line

(Testimony of D. S. Van Orman.)

of testimony, so it will not be necessary to repeat the objection.

The COURT.—That is the course I intend to pursue all through the case. If we attempt to follow any strict order of testimony it will take too long, and I shall pursue that method, unless it appears to be a serious disadvantage to the other party; and if it appears to be a serious disadvantage, I expect you to call my attention to it. If your objection is anything more than formal, I want you to indicate it very plainly.

Mr. SPRINGMEYER.—Very well; that was purely for the purposes of the record, a formal objection.

Mr. THATCHER.—(Q.) Did you proceed to monument the claim? A. Yes, sir.

Q. And placed the monuments over the ground?

A. Yes, sir. [25]

Q. How many monuments did you put up?

A. Seven monuments, all told, and the original location; four corner monuments and two side monuments.

Q. In addition or including the location?

A. Including.

Q. And were those monuments marked?

A. Yes.

Q. With their respective corners so you could tell what they were? A. Yes.

Q. After you monumented this piece of ground what did you do next?

(Testimony of D. S. Van Orman.)

A. I represented the ground by digging a hole four by six by ten.

Q. Where was that with reference to the location monument?

A. That was in the neighborhood of twenty-five or thirty feet of the location, something like that.

Q. When was that dug?

A. I commenced, if I remember right, on the 7th.

Q. On the 7th? A. Yes.

Q. After that, and after you had monumented the claim, did you do any other work on the ground?

A. I sunk a shaft in the gulch later on.

Q. When did you commence sinking that shaft?

A. On the first day of October.

Q. How deep did you sink it?

A. Fifty-seven feet.

Q. About when did you get down to the fifty-seven feet, about what date?

A. If I remember right, it was about twenty days sinking this shaft.

Q. You were about twenty days sinking the shaft? You got down there along about the 20th of October then? A. Somewheres along there.

Q. What did you find there?

A. I found gravel with pay dirt in it. [26]

Q. Pay dirt? A. Yes.

Q. What did you start doing?

A. Started taking out the gravel, and developing the ground.

Q. Did you erect any rockers on the ground?

A. Yes.

(Testimony of D. S. Van Orman.)

Q. Did you rock gold? A. Yes.

Q. How long did you work, Mr. Van Orman?

A. Well, we worked from that time up till the 26th day of November, I believe.

Q. To the 26th day of November? A. Yes.

Q. And about how much did you take out, do you remember?

A. I never kept no direct check on the amount, I judge in the neighborhood of a thousand dollars or so.

Q. In placer gold? A. Yes, sir.

Q. And how was that, was that find gold or coarse gold?

A. Well, it included both, some was fine and some coarse.

The COURT.—(Q.) This thousand dollars was taken out of that fifty-seven foot shaft?

A. Yes, sir.

Mr. THATCHER.—(Q.) Where have you mined, Mr. Van Orman?

A. In various states, Colorado, Wyoming, Montana, and the State of Nevada.

Q. Both lode and placer? A. Yes.

Q. What placer mining have you done, and where, beside the placer mining in Copper Canyon?

A. Colorado, principally, and some in Idaho, also in Wyoming.

Q. Based upon your experience as a miner, and on the developments you found there after making these openings, do you consider this a valuable placer mine? A. Yes, sir.

(Testimony of D. S. Van Orman.)

Q. Do you consider it is one that would bring in a net return after paying all expenses?

A. Properly manipulated, it would bring about good profits. [27]

Q. Good profits? A. Yes.

Q. When you first went into that district, before locating this ground did you go over the district as a general thing? A. Yes.

Q. Did you go over this claim?

A. Very carefully.

Q. Just tell the jury what you did, turn around there and tell the jury what you did.

A. When I came up there the condition of this ground was tipped off to me by the representative of the Glasgow-Western, who had evidently been upon it in some way by Mr. Ralph.

Mr. SPRINGMEYER.—We object to any hearsay evidence, and ask that the answer be stricken out as not responsive to the question. Just state what you did, not what you were told.

The COURT.—That may go out.

Mr. THATCHER.—No objection. Tell the jury what you did all over the ground.

A. Well, this man tells me as representative—

Q. No, what you did?

A. What I did was to go over the ground, see whether any representation had been done on said ground in any way, shape or form; after carefully examining the ground, I failed to see anything except an old well, dug some forty or fifty years ago —an excavation made for a cellar there; that was

(Testimony of D. S. Van Orman.)

all that I noticed on the ground, aside from some late developments that had been done by the Glasgow-Western; there was two shafts sunk on the Salt Lake No. 3 at that time, eight or nine foot deep, in placer, or in gravel.

Q. Did you find anything in the nature of a mill on the ground.

A. There was a portion of a mill on the side line of this particular claim.

Q. On which side line?

A. On the east side line, I believe. [28]

Q. The east side line of the ground? A. Yes.

Q. Did you look over the ground to see whether there were any lodes or veins exposed on it?

A. Yes.

Q. Did you find any? A. None whatever.

Q. Did you go over it carefully with that in view?

A. Yes, sir.

Q. What was your conclusion with reference to the ground after going over it?

Mr. SPRINGMEYER.—We object to any conclusion of the witness, upon the ground it is immaterial.

A. Well, I concluded that—

Mr. SPRINGMEYER.—Don't answer when an objection is made.

Mr. THATCHER.—For the purpose of showing it was unoccupied public land.

The COURT.—Well, he didn't find anything—that is the fact?

WITNESS.—Yes.

Mr. THATCHER.—(Q.) Did you find anything

(Testimony of D. S. Van Orman.)

in the nature of a location notice any place on that ground? A. No location notice at all.

Q. Did you find anything in the nature of a location monument? A. No, sir.

Q. At any place over that ground? A. Did not.

Q. Did you find any place on that ground, any workings—

Mr. SPRINGMEYER.—We don't like all these leading questions. I should like to give you considerable leeway; but let him answer what he saw instead of your putting words in his mouth all the time, please.

Mr. THATCHER.—I don't think they are leading, if the Court please, and I don't want to lead the witness.

The COURT.—I think your questions have been leading; but I don't think the questions as to whether he found any monuments or [29] excavations are objectionable. I will allow you to ask those questions.

Mr. SPRINGMEYER.—We except on the ground stated in the objection.

Mr. THATCHER.—(Q.) Did you find any workings upon the ground?

A. None whatever, except for the roadways and the construction of the mill.

Q. Except for roadways and construction of the mill? A. Yes.

Q. What was the deepest shaft you were able to find on that ground?

A. The workings had been completed that sum-

(Testimony of D. S. Van Orman.)

mer, had been developed, I should judge, for eight or nine feet at the most.

Q. And these workings you testified to, small shafts, where were they?

A. They were located in the south and west portion of this ground.

Q. Some place about in this location (indicating on map, Plaintiffs' Exhibit "A")? A. Yes.

Q. What were they sunk in? A. Gravel.

Q. Was anything in the nature of hard rock exposed there? A. None whatever.

Q. Mr. Van Orman, have you been along the center line, what might be called the center line, of the Guy Davis and Salt Lake No. 3? A. Yes, sir.

Q. Describe to the jury the character of that ground?

A. The character of the ground at that particular point consists of gravel.

Q. At any place from one end of the center line of that claim to the other, traversing the center of it, is there hard rock exposed? A. None whatever.

Q. Where upon the claim, if any place, is there any hard rock, [30] other than debris, wash and gravel, exposed?

A. Well, there is hard rock in place on the side lines, on the east and west side.

Q. On the east and west sides? A. Yes.

Q. About how far as it runs down would it be from the center line of that claim, taking the location monument, for instance?

A. Well, from the location monument designated in the location of '97, it would be, I should judge, two

(Testimony of D. S. Van Orman.)

hundred feet, I would judge, from there to where any solid rock crops.

Q. The location certificate in this case, however, was not prepared at your direction, but at the direction of one of the other parties, was it not?

A. I wrote out the certificate.

Mr. SPRINGMEYER.—The location certificate speaks for itself, and is the best evidence; we object to the question on that ground.

Mr. THATCHER.—All right. (Q.) I show you a paper, and ask you if you know what that is? (Hands to witness.)

A. Yes, sir; that is my location notice.

Q. Is that the first location notice which you said you posted on the ground? A. Yes.

Q. What date was that posted?

A. The 5th, if I remember right.

Q. The 5th? A. Yes.

Q. Did you afterward post another notice on the ground? A. Yes, sir.

Q. I show you this paper. (Hands to witness.)

A. Yes, sir. This is an amended location I made the next day.

Q. That is the one you posted the next day?

A. Yes.

Mr. THATCHER.—I offer them in evidence, if the Court please.

Mr. SPRINGMEYER.—We object to their introduction in evidence on the ground it appears that the attempted locations were relocations of lode claims, and the relocator is estopped to deny the [31]

(Testimony of D. S. Van Orman.)

previous mineral character of the lode claims, because he himself makes the assertion that they are mineral.

The COURT.—The objection will be overruled.

Mr. SPRINGMEYER.—We except on the grounds stated in the objection.

(The Location Notices are marked Plaintiffs' Exhibits "B" and "C" and read as follows:)

**Plaintiffs' Exhibit "B"—Location Notice of Guy Davis Placer.**

"LOCATION NOTICE.

Sept. 5th, 1913, 10 A. M.

This is to certify that I, the undersigned citizen of the U. S. have on this day of Sept, the fifth (5), 1913, relocated what is called the Salt Lake Claim No. 3, on the grounds of failure to comply with requirements of law, said Salt Lake Claim being claimed by Glascow Western Mining Co.

This claim shall be known as the Davis Lode Claim situated in Lander Co., Nev., Copper Canyon M. Dist., in Township 31-R-43-E-M-D-B & M-B, 18 or 20 miles S. W. of Battle Mountain, and runs as follows: 1500 feet northerly and southerly, 200 feet southerly from the Location Monument, and 1300 feet northerly and 300 feet on each side of Location Monument.

GUY DAVIS,
NOAH FAUBERT,
Locator.

Witness, D. S. Van Orman."

(Testimony of D. S. Van Orman.)

**Plaintiffs' Exhibit "C"—Amended Location Notice of Guy Davis Placer.**

"LOCATION NOTICE.

Sept. 6th, 1913.

We the undersigned do hereby make an Amended Location of the Guy Davis Lode Claim, located on the 5 of September, and located same as a placer claim located in Battle Mountain M. District, Lander Co., State of Nevada, 18 or 20 miles S. W. of the Town of Battle Mountain, and runs 1300 feet north of Location [32] Monument and 200 feet southerly and 300 feet on each side of monument. Work consists of a 10 foot hole 4x6 feet, 15 or 20 feet south of location monument. This claim shall be known as the Guy Davis placer claim. Located on the 6th of Sept. 1913.

Locators, GUY DAVIS,
NOAH FAUBERT,

Witness, D. S. Van Orman."

Mr. THATCHER.—(Q.) Mr. Van Orman, you state you went over that ground now within the boundaries of the Guy Davis placer, pretty carefully? A. Yes.

Q. Were you able to discover anything on that in the nature of a lode or vein?

A. There was nothing outside of chemically stained quartzite; that country had the appearance on first sight of being mineralized, which proved to be barren on investigation.

Q. Did you pan it? A. Yes.

(Testimony of D. S. Van Orman.)

Q. Did you find anything on that ground that would justify you as a miner or as a reasonable person in developing it? A. No, sir.

Q. That is, at any place within the boundaries of that claim, as a lode claim?

A. As a lode claim, I did not.

Mr. THATCHER.—You may cross-examine.

Cross-examination.

Mr. SPRINGMEYER.—(Q.) You said that the center of the claim was in the wash, that is the fact, isn't it, for the most part of the claim?

A. The portion containing placer is in the gulch; it is a little off to one side of the center.

(Recess for five minutes. After recess.)

Q. Mr. Van Orman, you said that along the center of the claim you found no hard rock; is it a fact that the center of the claim for the greater distance— [33]

A. (Interrupting.) Oh, approximately, the center, but I am referring to the main gulch.

Q. The main gulch? A. Yes.

Q. You would not say to the jury there was no hard rock or rock in place, in the center of the claim?

A. There is rock possibly in little spots near the center of the ground—country rock.

Q. There are outcrops, and so forth, at different parts of the claim, are there not? A. Yes.

Q. You didn't make any close examination of those outcrops, did you? A. Yes, sir.

Q. Very close? A. Very close.

Q. Just what did you do.

(Testimony of D. S. Van Orman.)

A. Well, I examined it, panned it, broke it and examined it in various ways characteristic with prospectors' tactics.

Q. Didn't you find any mineral characteristics anywhere? A. Nothing short of iron.

Q. Did you go into these shafts you testified to on the claim, and examine them to see if there were any veins?

A. There wasn't only about ten-foot of excavation made in solid rock formation on the claim.

Q. You didn't go into the shaft, did you?

A. There was no shaft to go into, outside of gravel shaft.

Q. Did you go into the ten-foot holes?

A. There was no ten-foot hole there.

Q. Did you go into the holes that were on the ground? A. I did not, the gravel holes.

Q. Did you go into this fifty-foot hole someone called a well? A. No, I didn't go into the well.

Q. Did you go into any open cuts near the old leaching plant? [34]

A. I failed to see any open cut at that point, except an excavation evidently made for a tent or residence of some kind.

Q. Did you examine the formation in the neighborhod of the leaching plant? A. Yes, sir.

Q. It is hard and solid there, is it not?

A. In some instances it is.

A. It is discolored by chemical and iron stains. is it not?

A. It is discolored by chemical and iron stains.

(Testimony of D. S. Van Orman.)

Q. You said you found no location monuments anywhere near the center of the claim?

A. None whatever.

Q. And you found no discovery work? A. No.

Q. Isn't it a fact that is in a canyon? A. Yes.

Q. Isn't it a fact that neighborhood is subject to cloudbursts and heavy rains?

A. As much so as any other portion of the earth, I should think.

Q. It is quite a large canyon; the mountains in the neighborhood are exceedingsly large, are they not?

A. It is not an exceedingly large canyon—a medium size gulch.

Q. The mountains back of the gulch are pretty large too, aren't they?

A. Yes, there are some good size mountains back of it.

Q. And the indications there are that there is a great deal of wash, and that there have been many cloudbursts in the past, are they not?

A. Judging from the size of the sagebrush existing in the main gulch, there is no evidence of a cloudburst in years.

Q. But there is wash all over the surface, is there not?

A. Well, there is more or less wash occurs constantly, yes; but there has been no excessive wash in late years.

Q. How long does it take sagebrush to grow up?

A. Well, the size of the brush there, as near as I could state, is possibly older than man; I would

(Testimony of D. S. Van Orman.)

judge thirty, or forty, or [35] fifty years, something like that, since there has been any disturbance in the form of a cloudburst in the gulch.

Q. You think it would take forty or fifty years for sagebrush to grow, do you? A. I think so.

Q. Now, when you made the location of the Guy Davis placer, you intended to take all the property within the boundaries of your location, did you not?

A. I certainly did.

Q. For whom did you make that location, Mr. Van Orman?

A. I made it for myself, for Guy Davis and Noah Faubert.

Q. Didn't put your own name on the location notice, though, did you? A. No, sir, I did not.

Q. Were you in Battle Mountain three years ago?

A. Yes, sir.

Q. Do you remember a great big cloudburst that was in this particular canyon at the time, and did quite a lot of damage to the pipe-line and some of the houses?

A. I remember numerous cloudbursts in the vicinity; I wasn't in the gulch two years ago, I guess.

Q. What were you doing at Battle Mountain three years ago?

A. Well, I was there in and out, prospecting the surrounding country.

Q. Did you ever live in Reno? A. Yes.

Q. What was your business when in Reno?

A. Same business I have been following for many years.

(Testimony of D. S. Van Orman.)

Q. Mining; that is all you did while in Reno?

A. Promoting and mining.

Q. Nothing else? A. Nothing else.

Q. Ever do anything else in Battle Mountain besides promoting and mining?

A. Well, that is what I follow; I might vary on some side issue that presented itself.

Q. Did you ever run a saloon in Battle Mountain?

A. No, sir. [36]

Q. Did not? A. No, sir.

Q. Never were interested in a saloon?

A. No, sir.

Q. What side issues did you follow in Battle Mountain and Reno?

A. I had no side issues in Battle Mountain whatever.

Q. What side issues did you follow in Reno?

A. Well, aside from mining, I organized and attempted to promote an amusement park there, what would come under the line of my business.

Q. Did you ever work in any mines in Battle Mountain, or in that vicinity, before you were employed by Faubert and Davis?

A. I worked in the Hilltop district.

Q. How long did you work there?

A. Oh, I was there all of one summer, practically prospecting in and around the neighborhood.

Q. All of one summer? A. Yes.

Q. That was all the work you did there?

A. At the Hilltop, yes, sir.

Q. In what mines did you work in Montana?

(Testimony of D. S. Van Orman.)

A. I didn't work in any mine; I was prospecting in Montana.

Q. Did you work in any mines in Idaho?

A. Yes.

Q. What mines?

A. Well, not in mines, I would not call them mines, but they were prospects, developments of my own.

Q. Of your own? A. Yes, sir.

Q. Did you work at any mines in Colorado?

A. Yes, sir.

Q. What ones?

A. Pittsburg, Leadville, A. Y., Smuggler Union.

Q. How long did you work in the Pittsburg in Colorado?

A. Oh, I only put in a few shifts there at the early stages of the development.

Q. What was the next property you worked in?

A. I don't remember exactly what property I worked in next—in various properties. [37]

Q. Can you name any of them for us?

A. I don't remember what I went to work at next, it has been a good many years ago; but as I told you, I worked in the A. Y. and Pittsburg.

Q. Do you know how long you worked in the A. Y.?

A. I don't remember the number of days; no, sir.

Q. Do you remember how long you worked in any of those properties?

A. Oh, perhaps a couple of months.

Q. Perhaps a couple of months? A. Yes.

Q. Where else have you mined? A. Colorado.

(Testimony of D. S. Van Orman.)

Q. Where else besides the State of Colorado and Idaho and Montana?

A. Wyoming, in the Battle Lake country; I worked for myself in various prospects throughout the State of Wyoming; in one instance I sorted the ore at the Rambler Mine, situated a mile and a half below Battle Lake.

Q. How long were you engaged in that?

A. I was about six months.

Q. How old are you now, Mr. Van Orman?

A. I am about fifty-four years old.

Q. During the years you say you have been engaged in mining and prospecting, have you had any other business besides those to which you have referred?

A. Oh, at intervals I have branched out in some other issues—stock raising.

Q. And that is all? A. That is all.

Q. At the time you located the Guy Davis placer, you knew there were other claimants to the Salt Lake No. 3 which you covered by your location, didn't you?

A. I knew there was some claimants, but there was nobody really owned the ground.

Q. You knew there were claimants, though?

A. I knew that, yes, sir.

Mr. SPRINGMEYER.—That is all. [38]

Redirect Examination.

Mr. THATCHER.—(Q.) Mr. Springmeyer asked you if you found any stains up around under the mill

(Testimony of D. S. Van Orman.)

in the rock, and you said you found some chemical and iron stains; what did that come from?

A. I judge it came from the gaseous fumes emanating throughout that entire range; the formation is characteristic over that whole district.

Q. Were there any chemical stains that came from the leaching plant? A. Numerous.

Q. Underneath the mill and through the rock in and around the mill, it is a fact, is it not, that all of the rock in there is stained from the chemicals coming from the leaching plant?

A. Yes, the chemicals penetrate the wash to a depth of ten or twelve feet in the main gulch, and stain the gravels.

Q. Do you know the gulch coming down on the Guy Davis placer? A. Yes.

Q. Do you know the buildings on that ground?

A. Yes.

Q. Are they situate in the wash, any of them?

A. Well, there is one of them practically in the edge of the gulch.

Q. Well, there are several of them right in the gulch itself?

A. Well, they are on the edge of the gulch, but not in the main wash.

Q. Where was the old barn?

A. Right in the center of the gulch.

Q. It was on the ground when you were there?

A. Yes.

Q. If a cloudburst had come down there any time in recent years it would have shown on the old barn

(Testimony of D. S. Van Orman.)

or the buildings in there, would it not?

A. It would.

Mr. THATCHER.—That is all.

The COURT.—(Q.) Mr. Van Orman, can you show on the map where you did your representation work? A. Yes, sir.

Q. Please do so. [39]

A. At a point here, approximately about two hundred feet from the end lines (indicating on Plaintiffs' Exhibit "A").

Mr. THATCHER.—Maybe I can get it a little better, so as to identify it to the Court and jury. (Q.) Was it at or about this little shaft marked "8"? A. Yes.

Q. On the Guy Davis placer?

A. In the neighborhood of two hundred feet from the south end line.

The COURT.—(Q.) Now where was the fifty-seven foot shaft you sunk?

A. The fifty-seven foot shaft was sunk down here in the main gulch.

Q. What is the number of it?

A. I don't know what the number of it is, but I would judge this is it, number 9; that spot there would indicate approximately the location of the shaft fifty-seven foot deep—number 9.

The COURT.—Very well, that is all.

Mr. SPRINGMEYER.—May I ask a question, I thought he brought it out clearly on his direct examination.

Q. Discovery work was performed about twenty

(Testimony of D. S. Van Orman.)

feet or so from the discovery monument, was it not?

A. Approximately. The discovery and representing was done in the side gulch near the discovery point leading into the main gulch.

Q. And at a point about twenty feet south of the discovery point?

A. Well, twenty or thirty feet, somewhere, I can't be exact.

Q. That is where you posted your notice of discovery, is it not? A. Yes.

Mr. SPRINGMEYER.—That is all.

Mr. THATCHER.—(Q.) Mr. Van Orman, Did you do any other work on that ground beside the sinking of that fifty-seven foot shaft you have testified to?

A. Ys, sir, we have got practically four shafts to bedrock on this claim. [40]

Q. To bedrock; what is the average depth of the bedrock?

A. Depth of bedrock will run in the neighborhood if fifty feet; fifty-seven feet is the deepest shaft, and the other will run practically the same,

Q. Did all of those expose pay gravel?

A. Yes, sir.

Q. When were those works done?

A. They were commenced in the neighborhood of the 20th of October, I believe; that is, aside from this one; we commenced this number nine shaft on the first day of October; and the next shaft there in the corner, approximately on the line of this claim and the Comet claim, was done prior to the location of this here Guy Davis claim; that was done some time

(Testimony of D. S. Van Orman.)

in August; that is, the work I had to do on them was done in August; and then there was a shaft sunk by Bert Williams and Harry Sheedy,—by myself and associates.

Q. On the Guy Davis proper, then, there were three shafts sunk to a depth of about fifty feet to the wash? A. Yes.

Q. Two of which were sunk by yourself, Davis and Faubert? A. Yes.

Q. And one by Sheedy and Williams, is that correct? A. Yes.

Q. When were those completed, can you tell me, before what date?

A. Well, I can't remember the exact date that the shafts were completed, it was—

Q. (Intg.) Were all of them completed before Thanksgiving Day, 1913? A. Yes.

Q. They were all completed how long before that?

A. Well, the shaft between the barn and Sheedy shaft—

Q. (Intg.) About the Sheedy shaft, that is north of it?

A. I would judge that was done about the 24th or 25th day of November.

Q. That was sunk by yourself and your partners?

A. Yes. [41]

The COURT.—(Q.) Where was that one?

A. It was between the Williams and Sheehy shaft and the old barn.

Q. What is the number of it on the map?

A. I am not familiar with this map.

(Testimony of D. S. Van Orman.)

Mr. THATCHER.—The most northerly fifty-foot placer shaft.

Mr. MORAN.—"J" is the old barn.

WITNESS.—Number 29, that is the old well; that would be the shaft, would it (indicating on map)?

Mr. MORAN.—"J" is the stable, 29 is the old well.

WITNESS.—The barn comes first and the well opposite, to my recollection, but the location of this particular shaft was between the Williams and Sheehy shaft and the old barn is the main center of the gulch.

The COURT.—(Q.) Do you find any numbered shaft there on the map that corresponds with the one you are speaking about

A. I didn't understand.

Q. Can you locate it there on the map by number?

A. Here would be the location, number 6, I would judge, was intended for the location of that particular shaft.

Mr. THATCHER.—(Q.) Was there a drift run from the bottom of that shaft?

A. There is a short drift about twelve feet long.

Mr. SPRINGMEYER.—May I question?

Mr. THATCHER.—Proceed.

Mr. SPRINGMEYER.—(Q.) The discovery work, however, was this shaft about twenty feet from the discovery point, marked 8, was it not?

A. Well now, to be frank, I never measured the exact distances from the shaft to the discovery shaft, but they are short distances, it might have been twenty feet.

(Testimony of D. S. Van Orman.)

Q. But that was the discovery work on that claim, was it not?

A. Yes, that was the discovery work.

Mr. SPRINGMEYER.—That is all. [42]

Mr. THATCHER.—Q. Now this work done by Sheehy and Williams, was done under a lease from you? A. Yes.

Q. And your partner? A. And my partner.

The COURT.—Has he located that Sheehy shaft?

Mr. THATCHER.—We will locate it by the surveyor, if the Court please, the witness has testified to its existence and we can locate it by the surveyor. There are three shafts on there.

The COURT.—Did he testify when that Sheehy shaft was sunk?

Mr. THATCHER.—Yes, sir, he testified it was sunk prior to Thanksgiving Day, completed about—when was the Sheehy shaft sunk?

A. It was commenced about the 20th of October.

Q. When did they finish?

A. Well, I think it was about seven or eight days, if I remember right; that would take to about the 27th or 28th of November.

Q. What did this shaft show?

A. It showed gravel.

Q. Were you down in it? A. Yes.

Q. Did you ever pan it? A. Yes.

Q. Was it paying quantity? A. Yes.

Q. Pay gravel was it? A. Pay gravel.

Q. It was completed, however, before the first day of November? A. Yes.

(Testimony of D. S. Van Orman.)

Mr. SPRINGMEYER.—Allow me to question.

Q. Mr. Van Orman, after you located this claim and did the original discovery work, what did you do with reference to staying on the claim or going away?

A. I was living on an adjoining claim.

Q. You were living on an adjoining claim?

A. Yes, sir.

Q. And when again did you do work on the Guy Davis claim?

A. I have never done no work since the 26th day of November, a year ago. [43]

Q. You did the discovery work about the first few days after you located the Guy Davis placer?

A. I commenced doing the discovery work on the 7th and completed it in about three days.

Q. Of September, 1913? A. Yes.

Q. And then did you do any more work?

A. I did.

Q. When did you begin doing the next work?

A. I commenced the first of October on this shaft in the gulch.

Q. The first of October? A. Yes.

Q. Did you work steadily after that?

A. Yes, sir.

Q. Until what time?

A. Until the 26th day of November.

Mr. SPRINGMEYER.—That is all.

Mr. THATCHER.—(Q.) You completed this first shaft you started on the first of October, as you have testified, between the 10th and 15th of October?

(Testimony of D. S. Van Orman.)

A. Somewheres along there, I don't remember; we worked continuously in that shaft until closed down, drifting and prospecting.

The COURT.—(Q.) Mr. Van Oram, I would like you to tell the character of the monuments you put around those two placer claims.

A. The character of those monuments consisted of boulders, rock, in some instances; in other instances it consisted of two by fours, nailed together, surrounded by rocks.

Mr. THATCHER.—(Q.) How high were those monuments? A. From four to six feet.

The COURT.—(Q.) What markings did you put on them?

A. They corresponded with what they represented —corners, side lines, and so forth.

Q. What did you put on the northeast corner?

A. On the northeast corner I must have put a notice in there indictating the northeast corner.

Q. You don't remember just what sort of a mark you put there?

A. No, I don't; it consisted of rock, and if I remember right, a [44] monument surrounded by rock.

Q. How many of the corners were marked with posts?

A. I don't remember; I don't think there was more than one or two at the outside.

Q. Those were rock? A. Yes, sir.

Q. Did you mark the rock?

(Testimony of D. S. Van Orman.)

A. No, I put notices in cans, or on a small board, and stuck in.

Q. In each monument? A. Yes, sir.

Q. In each corner monument? A. Yes, sir.

Q. And each side monument?

A. And each side monument.

The COURT.—That is all. [45]

**Testimony of L. O. Ray, for Plaintiffs.**

Mr. L. O. RAY, called as a witness on behalf of plaintiffs, after being sworn, testified as follows:

Direct Examination by Mr. THATCHER.

Q. Will you give your full name?

A. L. O. Ray.

Q. Where do you reside?

A. At the present time I am residing in San Francisco.

Q. In 1913, during the late summer and fall of that year, where did you reside?

A. I was in Copper Canyon.

Q. Is that in Battle Mountain Mining District, Lander County, this State? A. Yes, sir.

Q. What were you doing in there?

A. I was working on some placer ground there belonging to Mr. Healey and Murray—

Q. Murray Scott? A. Yes.

Q. What was the name of the placer ground?

A. The Homestake they called it, I believe.

Q. The Homestake? A. Yes.

Q. Did you become familiar with two so-called mining claims, the Midas and Evening Star, at that time? A. Yes.

(Testimony of L. O. Ray.)

Q. Did you go over that ground? A. Yes, sir.

Q. What has been your business, Mr. Ray?

A. Well, for the last ten or twelve years I have been prospecting and mining.

Q. Where have you prospected and mined?

A. Well, in different parts of Nevada, and some in Arizona, and some in Colorado.

Q. Where did you prospect and mine in Nevada?

A. In the southern part of the State of Nevada.

Q. What districts?

A. Well, I went into Tonopah in early days, and from there I went north of Tonopah.

Q. How long did you stay in Tonopah in early days? [46]

A. I went there in May, and worked for Jim Butler, until the first day of July in 1902.

Q. Did you locate mines and mining claims in that country at that time A. Yes, sir, I did.

Q. After you left Tonopah where did you go?

A. I went out to a camp about twelve miles north of there, called Ray.

Q. And what did you do out there?

A. I worked out there for about two years.

Q. Mining? A. Yes.

Q. And from there where did you go?

A. I went from there to Goldfield.

Q. How long did you stay in Goldfield?

A. I stayed in Goldfield about six months, leasing on a mine; I leased on the January and Mohawk.

Q. And from there where did you go?

A. From there I went to Bullfrog District.

(Testimony of L. O. Ray.)

Q. What did you do there?

A. I sent a man down there before I went that located what is known as the Tramps, and the Denver, and Hope, Fraction, Peerless, and other mining claims there.

Q. Lode mining claims, were they? A. Yes.

Q. Did you follow on down to the Bullfrog Mining District? A. Yes.

Q. What did you and your partners do with those mining claims with reference to going over them, did you open up any ore on them?

A. I went down there in November, and began to do the assessment work, and monument and survey the claims, and get them opened up, and open up ore on them.

Q. Did you open up ore on those claims?

A. Yes, sir.

Q. You continued mining in that district for how long? [47]

A. I continued mining in that district until 1908.

Q. And have you been mining continuously since that time? A. Yes, sir.

Q. Until the last few months? A. Yes, sir.

Q. You say you were over the Midas and Evening Star claims in that time? A. Yes, sir.

Q. Did you make a thorough examination of them?

A. Not more than I went there after the placer had been discovered, and I went over those claims looking at monuments, and looking at places that there had been work done there on the claims, more in a prospector's way, looking over them as to the

(Testimony of L. O. Ray.)

formation, as to the ore showing on the claims, where there was any work done.

Q. Did you go over the Salt Lake No. 3—Guy Davis Placer? A. Yes.

Q. How thoroughly did you go over that?

A. Well, I have been all up and down the gulch, and around where the mill is; there may be portions on the northeast corner of the Salt Lake No. 3, up above the road, that I have not been on, but outside of that I have been very well over it.

Q. Did you examine this Salt Lake No. 3—Guy Davis Placer with reference to ascertaining whether there were any lodes or veins showing on it?

A. I never saw anything—

Mr. SPRINGMEYER.—I object.

Mr. THATCHER.—(Q.) Did you examine it?

A. I did to a certain extent.

Q. For that purpose? A. I did.

Q. What did you find?

Mr. SPRINGMEYER.—I object to the question on the ground, plaintiffs having relocated these claims as mineral claims are [48] estopped to deny the mineral character of the prior locations.

The COURT.—The objection will be overruled.

Mr. SPRINGMEYER.—Exception on the grounds stated in the objection. May we assume that objection will be made to all questions of that same character?

The COURT.—Yes, that objection will go to all the testimony they attempt to put in as to the non-mineral character of the locations.

(Testimony of L. O. Ray.)

(By direction the reporter reads the question.)

A. Well, up on the road above the mill, and up on the hill, like on the north side of the Salt Lake No. 3, where the formation shows, there is seams there that would indicate that there might be some mineral in it, but I found nothing that would indicate a lode there; or, in other words, the company has spent its big money over on the other claims instead of doing the work there.

Mr. SPRINGMEYER.—I object on the ground the answer is not responsive to the question, and move that it be stricken out.

The COURT.—It may go out.

Mr. THATCHER.—(Q.) Did you find anything in the nature of a lode, which in your judgment as a miner and prospector, you think would have justified you in spending your time and money in developing?

Mr. SPRINGMEYER.—Object to the question on the ground it is immaterial; whether he would as a miner expend his money for that purpose is of no consequence here.

The COURT.—I think the objection is good. I think he should simply state what he saw there and what he found, and let the jury determine whether it was worth while.

Mr. THATCHER.—(Q.) Did you do any panning in hard rock? A. No, I did not. [49]

Q. In the Midas and Evening Star what did you do, did you go over that ground? A. Yes, sir.

Q. What was the result of your examination over that ground?

(Testimony of L. O. Ray.)

A. The only thing I see is the common country rock, and dikes that runs through all that part of the country; there was one place up on the further end of the Midas—it wasn't called the Midas, I think it was some other claim that was claimed by the Midas, that there was a little indication of ore there.

Mr. SPRINGMEYER.—I object to the answer on the ground it is not responsive to the question, and purely a voluntary statement on the part of the witness as to the boundaries of the Midas claim. If he does not know the boundaries of the Midas claim positively, and according to the plat in evidence here, then he has no right to testify as to what he found on that surface; and we object on the further ground it is a conclusion of the witness as to what the boundaries of the Midas claim are.

Mr. THATCHER.—(Q.) Do you know the boundaries of the Midas claim—have you been around them?

A. Well, I know the boundaries, what I suppose to be the boundaries. As I started to say before, they was trying to claim—

The COURT.—No, that will have to go out.

Mr. THATCHER.—(Q.) Did you go around the boundaries of the Midas claim? A. Yes, sir, I did.

Q. Did you find the monuments of it?

A. Yes, sir.

Q. Do you know whether or not this place where you said there might have been something in the nature of ore or mineral in place, or could you say whether or not that was within the boundaries of the

(Testimony of L. O. Ray.)

Midas claim? A. I could not.

Q. You could not?

A. At present I could not, no, sir.

Q. Not at the present time? A. No, sir. [50]

Mr. THATCHER.—You may cross-examine.

Cross-examination.

Mr. SPRINGMEYER.—I understood you asked nothing regarding the Evening Star?

Mr. THATCHER.—No.

Mr. SPRINGMEYER.—(Q.) You said that up on the road on the Salt Lake No. 3, Claim, there are some seams that might carry mineral?

A. Yes, sir.

Q. You made no chemical test of those?

A. I did not.

Q. You didn't even make a field test, did you?

A. No, sir.

Q. Just looked over hurriedly. Did you examine any of the shafts on the Salt Lake No. 3 to find whether there was any ore or whether there was any mineral in place on that claim?

A. Shafts on the Salt Lake No. 3?

Q. Yes.

A. No, I did not; I didn't find any shafts on the Salt Lake No. 3, except what the placers had done themselves.

Q. Did you ever examine these placer shafts to see whether there were any veins in the placer shafts?

A. No, sir, I have been down; I never examined them as to vein, I have been down there to examine the bedrock and the gravel that came off the bedrock.

(Testimony of L. O. Ray.)

Q. Isn't it a fact that in those shafts there are veins exposed in those placer shafts—veins or lodes exposed of mineral character?

A. Not in the ones I have been in.

Q. Are there in any of the others?

A. I don't know, I have not been in them.

Q. Did you ever tell Mr. Brown, Mr. Fred Brown, that there were veins exposed in the placer shaft on the Salt Lake No. 3? A. I did not.

Q. You did not? A. No, sir.

Q. Did you examine carefully the outcrops, if I might call them [51] such, on the Salt Lake No. 3, near the leaching plant or mill?

A. Yes, sir, there is where I had reference to, above the mill on the hillside.

Q. That is the place you said there were fractures and seams which might have ore? A. Yes, sir.

Q. Now, it is a fact, is it not, that miners everywhere disagree as to what ground is worth while locating and developing as a mine? A. Yes, sir.

Q. One miner would come along and pass up, to use the language of the street, certain ground that another man might locate, is not that a fact?

A. Yes.

Q. There is always a difference of opinion regarding the value of mining ground, is there not?

A. Yes, sir.

Q. Even experts disagree regarding the value, as well as ordinary miners? A. Yes, sir.

Q. You didn't pan any of the rock from these fractures or seams, did you? A. I did not.

(Testimony of L. O. Ray.)

Q. You could not testify to this jury that the fractures and seams did not carry values, could you?

A. No, sir, I couldn't.

Q. Now, with reference to the Midas, you say you don't know whether the particular point on which there was a vein exposed was upon the Midas or not?

A. No, I would not be positive now; at that time I thought it was above the Midas on another claim, but since the Midas has been surveyed it might have been taken in, I would not say positively.

Q. You just made an examination of that particular part, and don't know anything about the rest of the Midas claim, do you?

A. Well, I have been over it.

Q. Just roughly, in a general way?

A. There are some cuts there I have been in, and just shows the [52] general formation of the work done there, of the country.

Mr. SPRINGMEYER.—That is all.

Redirect Examination.

Mr. THATCHER.—(Q.) On the Salt Lake No. 3, after the examination you made, did you see anything there, which in your opinion as a miner and prospector would justify you in locating that as a lode mining claim?

Mr. SPRINGMEYER.—Object to the question on the ground it is immaterial, and on the ground it is not evidence to show whether or not the property is mineral in character, as to having a vein or mineral in place; that it is for the jury only to determine the facts; and on the further ground it calls for the con-

(Testimony of L. O. Ray.)

clusion of the witness purely.

Mr. THATCHER.—I think there can be no doubt that it is competent for a man who is a prospector and miner of long experience to say what he would consider worth locating; and it is for the jury to weigh that evidence, the same as the evidence of any expert. While on the former examination the Court sustained the objection to it, counsel on cross-examination brought it out, and asked Mr. Ray on that very question, and this is redirect examination of that question asked of him on that same line.

The COURT.—I think I will allow that testimony in, but I don't think the opinion of an expert is worth but very little unless the facts on which he bases it are put before the jury, and that is about the instruction I will give. In deciding a case of this kind, I should want to know the facts before I would accept the opinion, and it was for that reason, while I did not overrule the objection, if I recollect, I simply stated I thought you had better ask the witness as to the facts, and let him tell them. I will allow the opinion, but that will be the instruction [53] to the jury, that the opinion they must adopt on the facts in the case; that the weight of the opinion depends on the full and convincing force of the facts that are given by the expert in support of it; an opinion that is based on very few facts, necessarily is not so good as one based on a great many facts which are of convincing weight.

Mr. SPRINGMEYER.—We except to the ruling

(Testimony of L. O. Ray.)

of the Court on the grounds stated in the objection.

(By direction the reporter reads the question.)

The COURT.—You may answer.

A. I would not as a prospector locate it for mining purposes.

Mr. THATCHER.—That is all.

Mr. SPRINGMEYER.—(Q.) You would not say on that account if after you made a careful, technical examination *if* it, that it would not be worth while to develop it as a mine, would you, or expend money on it—you don't know enough about the property for that, do you?

A. Other people might go ahead, yes, that might not know as much about it as I do, and develop it for a mine, and spend money on it.

Q. And some might who know more about it, might they not? A. Yes, there is lots that do.

Q. And some who have made a more careful and detailed examination than you have, and might not know as much about mining as you do, or know more, might go ahead and develop it? A. Yes.

Q. And they would be rational, reasonable human beings, would they not?

A. They probably would, yes.

Mr. SPRINGMEYER.—That is all. [54]

Mr. GUY DAVIS, one of the plaintiffs, after being sworn, testified as follows:

**Testimony of Guy Davis, in His Own Behalf.**

Direct Examination by Mr. THATCHER.

Q. Mr. Davis, you are one of the locators of the Guy Davis placer? A. Yes, sir.

(Testimony of Guy Davis.)

Q. Did you cause a location certificate to be made of that placer? A. Yes, sir.

Q. By whom? A. O. P. Adams, surveyor.

Q. I ask you if this is the location certificate which you caused to be prepared? (Hands to witness.) A. As far as my judgment, it is.

Mr. THATCHER.—We offer it in evidence, if the Court please.

Mr. SPRINGMEYER.—We object on the ground previously stated.

Mr. THATCHER.—You may cross-examine.

Cross-examination.

Mr. SPRINGMEYER.—(Q.) Mr. Davis, at the time you directed this location of the Guy Davis placer, did you know that there were other claimants to the property covered by that location?

Mr. THATCHER.—Objected to, if the Court please, as not cross-examination.

The COURT.—I think the objection is good.

Mr. SPRINGMEYER.—(Q.) How did you direct the location of the Guy Davis placer?

Mr. THATCHER.—Objected to as not cross-examination.

The COURT.—It seems to me it is not cross-examination, and I will sustain the objection. I think the only question asked was whether he directed the location certificate to be recorded, and he produced the location certificate.

Mr. SPRINGMEYER.—We take an exception on

(Testimony of Guy Davis.)

the ground it is proper cross-examination.

(A recess is taken at 12 o'clock until 1:30 P. M.)

[55]

AFTER RECESS—1:30 P. M.

(All parties present.)

Cross-examination of Mr. GUY DAVIS (Resumed.)

Mr. SPRINGMEYER.—(Q.) Mr. Davis, in what manner did you direct that this location certificate be recorded?

Mr. THATCHER.—No, he didn't say "recorded," he said "prepared."

Mr. SPRINGMEYER.—I accept the correction—be prepared.

A. I didn't understand you.

Q. In what manner did you direct that this location certificate of the Guy Davis placer be prepared?

A. I can't understand you; my hearing is not very good.

Q. I wanted to know in what way you directed that this location certificate of the Guy Davis placer be prepared, did you tell someone by word of mouth to do it?

A. Yes, I wrote a letter from Battle Mountain to my partner, and explained it to him how to locate this ground.

Mr. THATCHER.—No, that is not an answer to the question. I move to strike it out as not responsive.

The COURT.—That may go out, it is not responsive to the question.

Mr. SPRINGMEYER.—(Q.) How did you direct

(Testimony of Guy Davis.)

this location certificate to be prepared?

A. Well, that I left to my partners, to prepare the location certificate; but I wrote my partners and told them how to locate this ground.

Mr. THATCHER.—I move to strike out the last part of the answer, "I told my partners how to locate this ground," on the ground it is not responsive.

The COURT.—That may go out.

Mr. SPRINGMEYER.—(Q.) You say you left it to your partners [56] to prepare the certificate?

A. To prepare the certificate, yes, sir.

Q. You didn't tell them to prepare the certificate, did you?

A. I wrote them a letter from Battle Mountain.

Q. Did you write them a letter to prepare the certificate?

A. Told them how to locate the ground, yes, sir.

Mr. THATCHER.—I move to strike out the answer on the ground it is not responsive. He doesn't hear.

The COURT.—That may go out.

The COURT.—(Q.) Did you tell your partner about preparing the certificate, how to draw the certificate, how to make it?

A. I didn't understand you.

Q. Did you ask your partner to make a location certificate? A. I told him to locate the ground.

Q. You didn't tell him to make any location certificate?

A. Why, no; it wasn't necessary to make a location certificate to locate the ground.

(Testimony of Guy Davis.)

Q. Did you ever ask anyone to make a location certificate?

A. I had the surveyor that I had survey this ground, right after we located it, he made a survey certificate, and I told him to record it, which he did.

Q. Was the certificate that was handed to you this morning that certificate?

A. As near as my knowledge, it is the same one.

Q. Then it was the surveyor whom you asked to make the location certificate, is that right?

A. Well, I don't understand what you mean by that.

Q. Have you ever seen this paper before? (Hands to witness.) A. Yes, sir.

Q. Who made it—do you know who made it?

A. This is not a location certificate— [57]

Q. Well, do you know who made that paper?

A. Who made this paper?

Q. Yes. A. Yes, sir.

Q. Who made it? A. O. P. Adams, and myself.

Q. Who is O. P. Adams?

A. He is deputy mineral surveyor in Battle Mountain Mining District, Lander County.

Q. How did he come to help you make it?

A. Well, we was right there to the camp when he made the survey, and he filled it out; we went over it, and we read it and signed it.

Q. You asked him to make it? A. I did.

Q. You asked him to write it out? A. Yes.

Q. What did you say to him when you asked him to write it out?

(Testimony of Guy Davis.)

A. Well, he made it out, and made the survey, you see, and then I told him I wanted that recorded, and he gets his paper and filled it out, and he recorded it himself.

Mr. THATCHER.—Is that all, Mr. Springmeyer?

Mr. SPRINGMEYER.—Yes.

(Location Certificate marked Plaintiff's Exhibit "D," and reads as follows:)

**Plaintiffs' Exhibit "D"—Location Certificate.**

LOCATION CERTIFICATE.

"State of Nevada,
County of Lander,—ss.

KNOW ALL MEN BY THESE PRESENTS, That Guy Davis, Noah Faubert the undersigned, have this 6th day of Sept. 1913, located and claimed, and by these presents do locate and claim, by right of the original discovery and this location certificate, in compliance with the Mining Act of Congress, approved May 10, 1872, and all subsequent acts, and with the Statutes of Nevada, and with local customs, laws and regulations 1500 linear feet and horizontal measurement on the Guy Davis Placer deposit, 307.5 [58] feet, running S. 21° 15′ E. from location monument, and 1192.5 feet running N. 21° 15′ W. from location monument, in Battle Mountain Mining District, County of Lander and State of Nevada, described by metes and bounds as follows, to wit:

Beginning at corner No. 1, whence to ¼ cor. E. Bdy. Sec. 33 t. 31 N. R. 43 E. M. D. B. & M. bears S. 8° 50′ E. 4305 ft. thence N. 68° 45′ E. 578 ft. to S. E. Cor. No. 2; thence N. 21° 15′ W. 1500 ft. to N. E. Cor.

No. 3; thence S. 68° 45′ W. 578 ft. to N. W. Cor. No. 4; thence S. 21° E. 1500 ft. to S. W. Cor. No. 1, place of beginning.

All corners and the location are 4x4x4.5 posts, set 18″ in the ground surrounded by a mound of earth and stone.

The location monument is situate at N. 39° 27′ E. 332.7 feet from the S. W. Corner. The location work is situate at S. 8° 15′ E. 28 feet from the location monument and consists of a shaft of the following dimensions, viz.: 4x6x10 ft.

Date of Discovery Sept. 6, 1913.

Date of Certificate Oct. 11, 1913.

GUY DAVIS,
NOAH FAUBERT,
Locators.

I, O. P. Adams, Surveyor, hereby certify, that on the 11th day of October, 1913, I surveyed the Guy Davis Placer Mining Claim, situate in the Battle Mountain Mining District, County of Lander, State of Nevada.

I further certify that the description in this additional and amended certificate above given is sufficient to identify the claim.

O. P. ADAMS,
Surveyor."

[Endorsed]: Filed for Record at the Request of O. P. Adams, October 20, A. D. 1913, at 2 P. M., and recorded Page 57 of Book 8, of Duplicate Mining Notices, Records of Lander County, Nevada. Bert Acree, County Recorder. No. 3336. Recorded at the Request of Wm. Doyle, Nov. 24, A. D. 1913, at

4 o'clock P. M., at Page 575 of Book 1 of Battle Mountain Mining District, Lander County, [59] Nevada. H. R. Lemaire, District Recorder."

**Testimony of John J. Healey, for Plaintiffs.**

Mr. JOHN J. HEALEY, one of the plaintiffs, called as a witness, after being sworn, testified as follows:

Direct Examination by Mr. THATCHER.

Q. What is your name? A. John J. Healey.

Q. Where do you live?

A. I live at present at Battle Mountain, Copper Canyon.

Q. In Copper Canyon? A. Yes, sir.

Q. What is your business?

A. My business is mining and prospecting.

Q. How long have you been a miner and prospector? A. A little over thirty-three years.

Q. Where?

A. Colorado, Idaho, Arizona and Nevada.

Q. How long did you work in Colorado?

A. I worked in Colorado on and off ever since '82.

Q. Until when?

A. Until close to seven years ago, about seven or eight years ago.

Q. How long have you been in Nevada?

A. I have been in Nevada since 1885, on and off.

Q. Have you been prospecting in Nevada during that time? A. Yes, sir; on and off different times.

Q. Do you know the Copper Canyon, Battle Mountain Mining District, Nevada? A. Yes, sir.

Q. When did you first go in there?

(Testimony of John J. Healey.)

A. The first time I went in there I think was about twenty years ago.

Q. Well, later years, when did you go in there?

A. I was in about five years ago. I was one of the original locators of the camp of Telluride; in fact, named Telluride.

Q. In 1913, did you go in that district?

A. Yes. [60]

Q. About what time?

A. I went in there along about July 1, think it was 7th or 8th, I won't be positive.

Q. What did you do there that time?

A. I went in to work for Christensen and Dahl, placer mines.

Q. Where is their ground with reference to the ground in controversy?

A. It adjoins the Homestake on the south.

Q. It adjoins the Homestake on the south?

A. Yes.

Q. Does it run right out in here, in that general direction? (Indicating on map.) A. Yes. sir.

Q. You were working for them as a placer miner?

A. Yes, sir.

Q. What else did you do?

A. Well, while I was working in the placer mine for Christensen and Dahl, I used to go out evenings after work, get through at about half-past three o'clock in the afternoon, or four o'clock, I used to go over the hills prospecting to see if I could find anything to locate, to better my own condition.

Q. Did you prospect over the ground now called

(Testimony of John J. Healey.)

the Homestake placer? A. Yes, sir.

Q. How many times in that time?

A. Yes, sir; several times.

Q. What did you find?

A. Well, sir, I prospected over the Homestake, prospected up the gulch very near to the head of the canyon, and in mostly all the gulches I could find a little placer gold.

Q. Within what are now the boundaries of the Homestake placer did you find anything?

A. Yes, sir; I found placer gold in three or four different places.

Q. How did you find that placer gold?

A. By panning.

Q. Could you see the gold in the pan?

A. Yes, sir.

Q. After that, what did you do?

A. I went over the ground to see if the ground was open for location. [61]

Q. And after that, what did you do?

A. And I traced up all the monuments, location monuments, corners—looked over all the ground to see if there was any different character of ground to my judgment, and I found that there was not.

Q. Well, what did you do?

A. I proceeded to make a location.

Q. Of what? A. Of placer.

Q. What did you do in making that location?

A. I erected a monument, put my location notice in it; about four or five days afterwards I went around with my partner.

(Testimony of John J. Healey.)

Q. What kind of a monument was it you put your location notice in? A. Stone monument.

Q. How high? A. About four feet.

Q. What was it built out of?

A. Built out of rock.

Q. You put a notice in that, did you? A. Yes.

Q. What did you call the claim?

A. The Homestake.

Q. After you put up your location monument on the Homestake, what did you do next?

A. I proceeded to monument my claim, and marked all the corners, designating the corner, the name of the claim and the locator.

Q. How did you monument those corners?

A. I monumented with rock monuments.

Q. How big were the monuments?

A. About four feet, could be distinguished with the naked eye at least three thousand feet.

Q. Good, big monuments? A. Yes.

Q. Did you put anything in those monuments?

A. Yes.

Q. What did you put in?

A. I marked the name of the claim, the corner, and the name of the locators.

Q. What do you mean by saying you marked the corner?

A. By the northeast corner or the southwest corner, number 1, number 2, number 3 and number 4.

[62]

Q. For instance, in the northeast corner you put a piece of paper, did you mark northeast corner

(Testimony of John J. Healey.)

Homestake placer? A. Yes, sir—in a tin can.

Q. And so on right around the claim?

A. Yes, sir.

Q. After you had marked the boundaries, what did you then do?

A. I proceeded to have my partner start and do the location work.

Q. Who was your partner? A. Murray Scott.

Q. Did he do the location work on that ground?

A. Yes.

Q. Where was that location work situated with reference to the discovery monument?

A. I should judge approximately ten or fifteen feet easterly.

Q. Can you point out the discovery monument on the Homestake placer on this map? A. Yes, sir.

Q. Will you do so?

A. Yes. (Witness indicates the point on Plaintiff's Exhibit "A.")

Q. Is the location monument described on the map Exhibit "A" as "Discovery Monument Homestake Placer," and a circle? A. Yes.

Q. Just above that are marked the figures 19, with a dot, and indicating a shaft, is that your location shaft or discovery shaft? A. Yes, sir.

Q. What did you find in that discovery shaft?

A. Well, we found colors in several of the pannings in the pan; we didn't pan all the dirt we took out, but every pan we panned we would find slight colors that would indicate, and encourage a man to sink deeper.

Q. What were the dimensions of that shaft?

(Testimony of John J. Healey.)

A. About five or six by eleven feet.

Q. Five or six by eleven feet? A. Yes, sir.

Q. After you had done that, did you do anything else? A. Yes, sir.

Q. What was the value of that work? [63]

A. The value of that work was about thirty-five dollars.

Q. That is your location shaft? A. Yes, sir.

Q. Value of about thirty-five dollars? A. Yes.

Q. Then what did you do?

A. We didn't do anything then until the first day of October.

Q. What did you do on the first day of October?

A. On the first day of October I started my partner, furnished him with material and grub to go ahead and sink the shaft to bedrock.

Q. Well, did he sink the shaft? A. Yes, sir.

Q. To bedrock? A. Yes.

Q. Have you been in that shaft? A. Yes.

Q. When did he finish sinking that shaft?

A. On or about the 17th day of October.

Q. How deep did he sink it?

A. I should judge it would be about approximately forty feet.

Q. About forty feet? A. Yes, sir.

Q. And what was there?

A. Well, we got to bedrock and found pay gravel.

Q. What do you mean by pay gravel?

A. Pay gravel that will produce equivalent to the work and leave a profit.

Q. You found gravel, placer gravel, that could be

(Testimony of John J. Healey.)

worked profitably as a placer proposition?

A. Yes, sir.

Q. How did you work that?

A. Worked it by rocking it.

Q. Hoist the dirt to the surface and then rock it with an old-time rocker? A. Yes, sir.

Q. You said before you made this location and posted your notice, you went over the ground within the boundaries of the Homestake; did you go over the ground embraced within what is designated on this map as the Midas and Evening Star?

A. Yes, sir. [64]

Q. What was your purpose in going over the ground?

A. To see if there was any lode or any mineral exposed on the ground.

Q. How carefully did you go over it, how many times?

A. I went over it and prospected and panned all the different cuts, pounded up the rock, panned it, some of it I burned, roasted and panned; also looked over all the monuments.

Q. Looked over all the monuments?

A. Yes, sir.

Q. What did you find on that ground?

A. I found one open cut, and I found while I was prospecting it, I found one shaft in the northeast corner of the Evening Star and the southwest corner of the Midas, I should judge it was right on the line of the two claims in the corner.

Q. Right about in here where these figures 1, 2

(Testimony of John J. Healey.)

and 4 are (indicating on map)? A. Yes.

Q. About in the neighborhood of the common corner between the Guy Davis and Evening Star?

A. Yes.

Q. You found a shaft there, did you? A. Yes.

Q. What were the dimensions of that shaft?

A. About three and a half by six feet wide and seven feet deep.

Q. What was disclosed in it? A. Gravel.

Q. Was hard rock anywhere disclosed in it?

A. No.

Q. Let me ask you, how near does the channel, the wash or gulch run to that shaft?

A. Right over the top of the channel.

Q. Right over the top? A. Yes.

Q. That shaft was sunk in the channel and wash?

A. Yes.

Q. How far from your experience, and through workings you have done yourself, or know of being done on that ground, is it to bedrock, about, in that place?

A. I have helped sink shafts and been down in the shafts, and it will average about forty-five feet, [65] approximately forty to forty-five feet.

Q. This shaft, as I understand you, would not have reached bedrock or hard rock within thirty to thirty-five feet, if continued on? A. No, sir.

Q. Was there anything disclosed in that except gravel? A. That is all.

Q. Did you find anything else in the way of workings on either of the boundaries now designated as the Evening Star?

(Testimony of John J. Healey.)

A. Yes, sir; I found an open cut along about the center of the claims.

Q. An open cut about the center of the claim?

A. Yes.

Q. Would this open cut which is marked "20" on the Evening Star, be about the position of it?

A. Yes, sir.

Q. What was that open cut?

A. It was an open cut about four and a half, I should judge, by about twenty feet, maybe thirty.

The COURT.—How is that marked, Mr. Thatcher?

Mr. THATCHER.—Number Twenty, if the Court please.

WITNESS.—With a face, I should judge about eight or nine feet.

Q. Was that in hard rock? A. Yes, sir.

Q. What was the character and formation of that rock?

A. Quartzite, I should judge, from my experience.

Q. What was the color of it?

A. It was brown—oxidized.

Q. Did you ever take any pannings from that?

A. Yes.

Q. What did you get? A. Nothing.

Q. Did you ever get any gold, silver or copper out of that? A. No, sir.

Q. Based upon your experience as a miner, was there anything in that cut which would indicate or show a lode or vein of any kind?

A. No, sir. [66]

(Testimony of John J. Healey.)

Q. Did you find a location monument on the Evening Star? A. Yes, sir.

Q. Is it marked on this map? A. Yes, sir.

Q. Marked as "Discovery Monument Evening Star"? A. Yes, sir.

Q. What was the character of the ground where that location monument is situated? A. Wash.

Q. Is there any hard rock there or in that vicinity?

A. No, sir.

Q. What is the nearest hard rock to that monument?

A. I should judge, exposed, about a hundred and fifty or two hundred feet.

Q. Is that the open cut?

A. The open cut, that is it, shows in the open end.

Q. That is the nearest hard rock? A. Yes.

Q. Is there anything which even indicates a lode or vein at or near the location monument of the Evening Star? A. No, sir.

Q. What other work, cut or excavation did you find on the Evening Star?

A. I found an open cut on the south end of the Evening Star.

Q. Would that be approximately it, designated "24" on the southern end of that? A. Yes, sir.

Q. What were the dimensions of that cut?

A. That cut was in the neighborhood of about twenty-five feet long, about four and a half feet wide, and about seven-foot face.

Q. How did the cut look at the time you saw it?

A. Well, there was sagebrush growing in the bot-

(Testimony of John J. Healey.)

tom of the cut, and it was all caved in on the sides. [67]

Q. What was the character of the rock or material in there?

A. Well, I always called it practically a leached quartzite.

Q. What was the color of it? A. White.

Q. Was there anything in the nature or shape of a vein or lode exposed in that cut? A. No, sir.

Q. Did you ever pan that cut?

A. No, sir; it never even showed solid rock in place.

Q. It didn't show solid rock? A. No.

Q. Have you been to that cut since?

A. Yes, sir.

Q. When?

A. I was to the cut on, I think it was about the 14th or 15th of this month.

Q. The 14th or 15th of this month?

A. Yes, sir.

Q. Now calling your attention to the Midas, did you go over the Midas claim? A. I did.

Q. Did you go over it very thoroughly?

A. Yes, sir.

Q. What did you do on it?

A. Well, I found the location monument that is marked on the map.

Q. You found the location monument as marked here on the map? A. Yes, sir.

Q. Did you find any work on that within the Midas? A. Yes, sir.

(Testimony of John J. Healey.)

Q. Where?

A. I found one open cut about four to five hundred feet north of the location monument.

Q. Would that be approximately cut Number 17?

A. Yes, sir.

Q. What was the character of that cut?

A. Done in wash.

Q. What were its dimensions?

A. I judge it would be about eleven feet, maybe more, about fourteen feet; about four and a half feet wide, and about a ten-foot face.

Mr. SPRINGMEYER.—Pardon me, give those dimensions again, please.

A. I should judge about fourteen to seventeen feet long, and four and a half feet wide, and about a ten-foot face.

Mr. THATCHER.—(Q.) Was hard rock exposed any place in that cut? A. No, sir.

Q. Wasn't anything that looked like a vein or lode? A. No, sir.

Q. What other work did you find on that ground?

A. I found a shaft, or small cut more than a shaft, about one [68] hundred and forty-five feet, a little north and east, I should judge, from the location monument.

Q. Would that correspond to "21" on this map?

A. Yes, sir.

Q. What were the dimensions of that cut?

A. I should judge it was about seven feet deep, about five feet wide, and about eleven feet long.

Q. Was it more in the nature of a shaft than a cut?

(Testimony of John J. Healey.)

A. Well, I would not exactly call it a shaft, it is more like a hole dug in the ground there—I would not call it a shaft.

Q. Was that in hard rock? A. Yes.

Q. What was the character of the rock?

A. Quartzite.

Q. What was the color of it?

A. A gray, or white.

Q. Did you ever do any panning in that cut?

A. I have, yes, sir.

Q. What was the result?

A. I never got no results at all.

Q. Ever get any colors? A. No, sir.

Q. What other work did you find on that ground?

A. I found a tunnel about, I should judge, two hundred, close to two hundred feet south of the open cut, or south of the shaft.

Q. And about the same distance from the discovery monument? A. Yes, sir.

Q. Would that correspond practically with "22"?

A. Yes, sir.

Q. Was that in hard rock? A. Yes, sir.

Q. How far was it driven in, if you remember?

A. About thirty-five feet.

Q. Were there any cross-cuts in it? A. No, sir.

Q. Or drifts from it? A. No, sir.

Q. What was exposed in that cut, or in the tunnel?

A. Well, there was a streak in there, I should judge about [89] eighteen inches in, horizontal, nearly so, of the nature, to me looked like if there had been two bodies of material come together and

(Testimony of John J. Healey.)

had crushed a lot of the material—filled with the crushed quartzite.

Q. Filled with the crushed quartzite? A. Yes.

Q. Did you take any pannings from that?

A. I have, yes, sir.

Q. What was the result?

A. I never got no indications of mineral whatever.

Q. Didn't get any indications? A. No.

Q. Was it of such character you would call it a vein or lode, in your experience as a miner?

A. No, sir.

Q. Was it of such a character as would in your opinion justify work or developing?

A. No, sir, I think a man would be crazy to build a monument on it.

Mr. SPRINGMEYER.—It is understood the same objection is made to all these questions with reference to whether it would justify working. I have not made the objection in order to save time.

The COURT.—Yes, it is understood you have put in an objection to every opinion that has been given.

Mr. THATCHER.—(Q.) Did you prospect over that ground, besides these holes, in places?

A. Yes, sir.

Q. And did you pan? A. Yes, sir.

Q. What, if anything, did you find?

A. Well, in panning around in the wash and gravel I found colors in several places along in the gulches.

Q. Well, did you pan any of the hard rock?

A. I panned every cut every place where it showed any kind of crevice or seam of any description; I

(Testimony of John J. Healey.)

have panned here and there all over that at different times.

The COURT.—(Q.) You say you never could get a color? [70] A. No, sir, in the hard rock.

Mr. THATCHER.—(Q.) I show you a paper, and ask what that is? (Hands to witness.)

Mr. SPRINGMEYER.—Object to that, it is an opinion. The record is the best evidence, and the paper speaks for itself. Have him identify it, not state what it is.

The COURT.—(Q.) Do you know what that document is? A. Yes, sir.

Q. Was it signed by you? A. Yes, sir.

Mr. THATCHER.—(Q.) You have already testified with reference to this document, have you?

A. Yes, sir.

Q. Is this the location notice which you posted upon the ground? A. Yes.

Q. Did you afterwards have this location notice recorded?

A. Yes, sir; this is a copy of the notice of location on the ground.

Q. Did you have this one recorded?

A. This one here is recorded; the duplicate is in the monument.

Mr. THATCHER.—We offer it in evidence, if the Court please.

Mr. SPRINGMEYER.—We have no objection other than the formal objection we made to all evidence of this character.

The COURT.—Your formal objection is that they

(Testimony of John J. Healey.)

have not proven the ground was open to location; that is the only objection, is it not?

Mr. SPRINGMEYER.—That is all.

The COURT.—It will be admitted. You may have an exception.

(The location notice is marked Plaintiffs' Exhibit "E," and reads as follows:) [71]

**Plaintiffs' Exhibit "E"—Location Notice of Homestake Placer.**

"NOTICE OF LOCATION OF PLACER CLAIM.

TO WHOM IT MAY CONCERN: Notice is hereby given that the undersigned citizens of the United States, over the age of twenty-one years, have this day located under and in pursuance of and having complied with sections 2329, 2330, 2331, of the Revised Statutes of the United States, and the Laws of the State of Nevada and the local laws, Customs and Regulations of this District, have this day located the following described Placer Mining ground situated in the Battle Mountain Mining District of Lander County, State of Nevada, viz.: Commencing from Location Monument, thence 400 ft. 30° W. of South to Cor. No. 1, thence 600 ft. 20° N. of East to Cor. No. 2, thence 800 ft. 20° E. of North to Cor. No. 3, thence 600 ft. 20° S. of West to Cor. No. 4, thence 800 ft. 20° W. of South to Cor. No. 1, thence 200 ft. 20° N. of East and tied to Cor. No. 4 of the Kayak Placers about 12 acres in all. This claim is located upon a valuable bed or deposit of Petroleum and other Hydro-Carbons in solid, liquid and gaseous form, gold, silver and other precious metals.

(Testimony of John J. Healey.)

This claim shall be known as the Homestake Placers, Placer Mining Claim, and we intend to work the same in accordance with the local customs and rules of miners in said mining district, laws of the United States and the State of Nevada, and each of the undersigned have an undivided one-half interest thereon.

Located this Eighth day of September, 1913.

Names of Locators:

JOHN J. HEALEY.

MURRAY SCOTT."

[Endorsed]: "Filed for Record at the request of John J. Healey Sept. 15, A. D. 1913, at 4 P. M., and recorded at page 40 of Book 8 of Duplicate Mining Notices, Records of Lander County, Nevada. Bert Acree, County Recorder. File No. 3248." [72]

Mr. THATCHER.—(Q.) Did you prepare, or cause to be prepared a location certificate of this claim? A. Yes, sir.

Q. I hand you a paper and ask you if that is the location certificate? A. Yes.

Q. Did you prepare that yourself? A. No, sir.

Q. Who prepared it? A. Mr. O. P. Adams.

Q. Did he prepare it under your direction?

A. I employed him to do it.

Q. And did you cause it to be recorded?

A. Yes, sir.

Mr. THATCHER.—We offer it in evidence, if the Court please.

Mr. SPRINGMEYER.—Same objection.

The COURT.—That is the only objection?

(Testimony of John J. Healey.)

Mr. SPRINGMEYER.—That is all.

The COURT.—It will be admitted, and you may have an exception.

Location certificate marked Plaintiffs' Exhibit "F," and reads as follows:

**Plaintiffs' Exhibit "F"—Location Notice of Homestake Placer.**

"LOCATION CERTIFICATE.

State of Nevada,
County of Lander,—ss.

KNOW ALL MEN BY THESE PRESENTS, That John J. Healey, Murry Scott, the undersigned, have this 8th day of Sept., 1913, located and claimed, and by these presents do locate and claim, by right of the original discovery and this location certificate, in compliance with the Mining Act of Congress, approved May 10, 1872, and all subsequent acts, and with the statutes of Nevada, and with local customs, laws and regulations 1078.6 linear feet and horizontal measurement on the Homestake Placer Deposit, 364 feet running S. 20° 30′ W. from location monument, and 714.6 feet running N. 20° 30′ E. from location monument, [73] Battle Mountain Mining District, County of Lander and State of Nevada, described by metes and bounds as follows, to wit:

Beginning at corner No. 1, thence to ¼ cor. E. Bdy. Sec. 33, T. 31 N. R. 43 E. M. D. B. & M. bears S. 10° 15′ E. 3350 ft., thence N. N. 69° 30′ W. 600 ft. to S. W. cor. No. 2, thence N. 20° 30′ E. 1078.6 ft. to N. W. cor. No. 3, thence S. 69° 30′ E. 600 ft. to N. E.

(Testimony of John J. Healey.)

Cor. No. 4, thence S. 20° 30′ W. 1078.6 ft. to S. E. Cor. No. 1, place of beginning.

The location monument is situate at N. 45° 03′ E. 400.2 feet from the S. W. corner. The location work is situate at S. 88° E. 28 feet from the location monument and consists of a shaft of the following dimensions, viz.: 4 x 6 x 10 ft.

Date of Discovery Sept. 8, 1913.

Date of Certificate Oct. 11, 1913.

JOHN J. HEALEY,
MURRY SCOTT,
Locators.

I, O. P. Adams, Surveyor, hereby certify that on the 11th day of October, 1913, I surveyed the Homestake Placer Mining Claim, situate in the Battle Mountain Mining District, County of Lander, State of Nevada. I further certify that the description in this certificate above given is sufficient to identify the claim.

O. P. ADAMS,
Surveyor."

[Endorsed]: "Filed for Record at the request of O. P. Adams October 20, A. D. 1913, at 2 P. M., and recorded page 57 of Book 8 of Duplicate Mining Notices, Records of Lander County, Nevada. Bert Acree, County Recorder. No. 3335. Recorded at the request of Wm. Doyle Nov. 24th, A. D. 1913, at 4 o'clock P. M. at page 574 of Book I of Battle Mountain Mining District, Lander County, Nevada. H. R. Lemaire, District Recorder."

(Testimony of John J. Healey.)

Mr. THATCHER.—(Q.) What is the character of the rock, material or earth in and about or surrounding the point marked "Discovery Monument of Midas lode"? A. Wash.

Q. Where is the nearest hard rock to that?

A. Approximately about two hundred or three hundred feet, I should judge.

Q. Isn't there hard rock up in this hole (indicating on map)?

A. In that shaft about a hundred and twenty-five feet.

Q. In any place between the hole up there marked number "20" and [74] the discovery monument, what is the character of the soil or ground in there?

A. Well, it is a wash of earth and rock mixed together, and gravel.

Q. Is hard rock exposed any place between those points? A. No, sir—covered with sagebrush.

Q. Are you familiar with the Salt Lake No. 3—Guy Davis placer ground, the ground covered by that? A. Yes.

Q. Have you been over that? A. I have.

Q. How many times have you been over that?

A. Well, a great many times; I walked over and backwards, I guess three or four hundred times.

Q. What did you find on the ground there; did you prospect that ground?

A. I have, yes, sir.

Q. Ever do any panning on it? A. I have.

Q. Did you pan for placer? A. I have.

Q. What did you find?

(Testimony of John J. Healey.)

A. I found colors in several places in the Guy Davis placer.

Q. Mr. Healey, have you been along the center line of that claim? A. I have.

Q. With whom?

A. I have been with Mr. Moran, and been along with Mr. Pickett.

Q. Mr. Pickett was the surveyor in the former case tried in this court?

A. Yes. I have been over it with Mr. O. P. Adams, the surveyor.

Q. You say you have been over the center line of the claim? A. Yes, sir.

Q. With Mr. Pickett and Mr. Moran, the surveyor, and also with Mr. Adams? A. Yes. [75]

Q. Can you tell me what the general character of the soil is along the center or lode line, if I may use that word?

The COURT.—Which claim is that?

Mr. THATCHER.—Salt Lake No. 3—Guy Davis placer.

A. It is absolutely wash from one end to the other.

Q. Is there at any place from the north end line to the south end line along the center or lode line, where there is hard rock exposed? A. No, sir.

Q. Have you ever been at this point which is designated on the map as "Discovery monument of Salt Lake No. 3"? A. Yes, sir, I drove that peg there.

Q. Who were you with when you drove that peg?

A. Mr. O. P. Adams.

Q. Were you afterwards with any one else to that peg?

(Testimony of John J. Healey.)

A. Yes, I was with Mr. Pickett, and also Mr. Moran.

Q. Do you know whether that point represents the point designated on the map as the "Location Discovery Monument of Salt Lake No. 3"? A. Yes.

Q. What is the character and nature of the soil or rock formation at that point?

A. Sagebrush and wash.

Q. Well, I am talking not about the vegetation, but the earth. A. Wash.

Q. Wash? A. Yes.

Q. From your experience, and through workings in that district above, to the north and south, that you are familiar with—are you familiar with the workings there? A. Yes, sir.

Q. What would you say the depth under that monument would be to hard rock?

A. I judge about forty-five feet.

Q. About forty-five feet? A. Yes. [76]

Q. That is based on your knowledge of other shafts in that locality? A. Yes.

Q. What is the nearest hard rock, from that point.

A. I should judge it would be approximately 175 to 200 feet.

Q. Which way? A. East.

Q. Is there hard rock to the west, too?

A. Northeast and west.

Q. I mean generally west? A. No, sir.

Q. You mean to the east, over here in the direction of the mill? A. Yes, sir.

The COURT.—I don't understand that now.

(Testimony of John J. Healey.)

Does he mean the hard rock is to the east or to the west?

Mr. THATCHER.—(Q.) What do you mean?

A. To the east.

The COURT.—(Q.) And there is no hard rock to the west of the claim?

A. There is none right west of this location monument approximately close.

Q. Is there any on the claim west? A. Yes, sir.

Q. There is on the claim?

A. Yes, on the northwest corner.

Mr. THATCHER.—(Q.) Whereabouts to the west?

A. Well, it is northwest of the discovery monument.

Q. About how far?

A. I should judge it would be about three hundred feet.

Q. About three hundred feet? A. Yes.

Q. Almost over to the side line before you come to hard rock? A. Yes, sir.

Q. Where there is any cropping? A. Yes.

Q. Now, are there any croppings up along through here (indicating on map)? A. Yes.

Q. Near the mill? A. Yes.

Q. Are they above or below the mill, with reference to the topography of the country?

A. Above the mill. [77]

Q. And what direction would that be?

A. That would be north of the mill there.

Q. Would it likewise be easterly of the mill, easterly of the claim?

(Testimony of John J. Healey.)

A. Well, there is some hard rock easterly of the claim, but it is off the claim.

Q. What work or development, buildings, or anything else, did you find on the ground—what did you find on the ground in the nature of excavations?

A. Well, I found a wagon road there that had been excavated.

Q. A wagon road; would this be the wagon road running up to the mill?

A. Yes, sir, from the main county road.

Q. What else?

A. I found an old open cut there behind an old cabin, that had been dug out.

Q. About where would that be?

A. It lies right in back of this "K" in here (indicates on map).

Q. What is the nature of that cut? A. Wash.

Q. What are its dimensions?

A. Never measured them.

Q. Well, about.

A. Oh, I should judge it would be about three-foot high, more like an excavation for a tent or to put a cabin on.

The COURT.—What number would that correspond with?

Mr. THATCHER.—That would correspond to right back of "K," marked on the map; that would be east of "K."

Q. What other work did you find on that ground at that time?

A. I found no other work on the ground outside

(Testimony of John J. Healey.)

of an old well that was sunk there, and also a small shaft at the lower end of the claim.

Q. That is all the work that you found on it?

A. Yes, sir.

Q. On the Salt Lake No. 3 then, this is the only thing in the nature of excavations that you found on the ground? [78] A. Yes, sir.

Q. Did you find any excavations on the ground which had been used for mining? A. No, sir.

Q. Did you find a mill on the ground?

A. Yes, sir.

Q. Had that been excavated for the foundation of the mill, some excavations been made for that?

A. Yes, sir.

Q. Where did the mill lie?

A. The mill lies on the east line of the Salt Lake No. 3.

Q. And about the position as you remember it, located on the map?

A. About 275 or 300 feet from the northeast corner post.

Q. Have you been over that ground since?

A. Yes, sir.

Q. And have you prospected it since? A. Yes.

Q. In your examination of that ground is there anything on it, which in your experience as a miner you would call a lode? A. No, sir.

Q. Or vein? A. No, sir.

Q. Did you find anything in the nature of a lode or vein which would justify exploration or work?

A. No, sir.

(Testimony of John J. Healey.)

Q. Had there ever been any mining work done on that ground? A. No, sir.

Mr. THATCHER.—Cross-examine.

Cross-examination.

Mr. SPRINGMEYER.—(Q.) I suppose in your experience as a miner you have panned a good many times, haven't you? A. Yes, sir.

Q. When you panned on these different claims how did you grind the rock?

A. Pestle and mortar.

Q. You have a pestle and mortar?

A. Yes, sir, always have. [79]

Q. Did you ever pan any sulphide ore that produced colors? A. Yes.

Q. You have? A. I have.

Q. Do you mean to tell this jury in panning sulphide ores that you get colors? A. Yes, sir, I do.

Q. Always?

A. Not always, but if there is any in there, I can roast it and get them.

Q. You didn't roast these ores, did you?

A. I roasted some of them, yes.

Q. Did you roast the rock—

A. (Intg.) I didn't find no ore.

Q. (Contg.) From these three lode claims?

A. Yes, sir, I roasted some of it; I always do.

Q. What is that? A. Always roast it.

Q. Did you roast the rock that you took from the Salt Lake No. 3, the Evening Star and the Midas?

A. I roasted part of them yes, sir.

Q. Tell us how you did that?

(Testimony of John J. Healey.)

A. How do I do it? I throw it into a fire, get it to a cherry red, take it out and cool it off, and pound it up.

Q. Whereabouts,—you did it right in the canyon?

A. No, didn't do it right in the canyon; I done it in the blacksmith shop.

Q. In the blacksmith-shop? A. Yes.

Q. And you didn't find any signs of gold?

A. No, sir, not a particle.

Q. Do you mean to say in the straight panning of sulphide ores you can get colors? A. Yes, sir.

Q. Always, no matter how fine the gold is? [80]

A. Yes, sir, if there is any in there that is not associated with the iron.

Q. You had better make your method public, Mr. Healey, it would be worth a good deal to you, I think.

A. I don't think, they are treating sulphide ores all over the country to-day on a concentration basis, and concentrating the sulphide.

Q. You said that in all these workings made by the owners of the Evening Star, Midas and Salt Lake No. 3, you were not able to get any colors at all?

A. No, sir.

Q. Not a sign of a color?

A. Not a sign of a color.

Q. Now, what would you say if in sinking a shaft to a depth of about thirty-five feet, there were no colors in the pan but the assays showed values of from seven to ten dollars, would you say that hard rock might possibly be ledge matter?

A. Possibly be ledge matter?

(Testimony of John J. Healey.)

Q. Yes.

A. Why, if the ledge was there, yes. I have seen hard rock that would run seven to eight dollars at thirty-five feet that would not pan.

Q. So if there should be any evidence adduced here showing that in any one of these workings there were assays of that value, you would change your opinion as to the lode value of the properties?

A. No, sir, I would not.

Q. You would not? A. No, sir.

Q. You said you went over these two claims, Evening Star and Midas, very thoroughly before you located the Homestake placer? A. Yes, sir.

Q. When did you begin working in Copper Canyon?

A. I began working in Copper Canyon on or about the 8th day of July, 1913. [81]

Q. For whom were you working?

A. Christensen & Dahl.

Q. How long did you continue to work there?

A. I worked there until the 17th day of October.

Q. Continuously? A. Yes.

Q. Every day?

A. Well, not so continuously; I laid off about seven or eight days.

Q. When did you lay off?

A. I laid off along about the first day of October.

Q. Other than that you worked continuously?

A. Yes, sir, every day.

Q. So you managed somehow or other to go pretty thoroughly over the Evening Star and Midas, in spite

(Testimony of John J. Healey.)

of the fact you were working all the time for Christensen & Dahl, didn't you?

A. Yes, sir, I do it every place I work.

Q. Isn't it a fact, Mr. Healey, when you located the Homestake placer, you said you didn't think you had much chance to get away with it, but you had nothing to lose? A. No.

Q. Did you tell that to Mr. F. D. Brown?

A. I never spoke to Mr. Brown in my life, outside of the water question.

Q. Did you say it in his presence in Copper Canyon just after locating the claim?

A. No, sir; I never spoke to Mr. Brown about it, never held a conversation with him.

Q. Were you on day shift or night shift?

A. I was on day shift, they don't work no night shift.

Q. When you were working for Christensen & Dahl, did you know Mr. Ralph? A. Mr. Ralph?

Q. The defendant in this case.

A. No, sir, not until this trouble arose. [82]

Q. Christensen and Dahl owned the placer claim which was south of the Evening Star and Midas, did they not? A. Yes, sir.

Q. And that is the claim you were working on?

A. Yes, sir.

Q. Now do you know that prior to that location of the Homestake placer, Mr. Ralph sank a shaft which is designated on the map as number 26, to a depth of about thirty-three feet, on the west side line of the Evening Star? A. Yes, sir.

(Testimony of John J. Healey.)

Q. You knew that that shaft had been sunk prior to your locating the Homestake placer, did you not?

A. It wasn't sunk prior to my prospecting; it was sunk prior to my location.

The COURT.—When did you say it was sunk?

A. Prior to my location.

Q. Didn't you say something before that?

A. I said it wasn't sunk prior to my prospecting.

Q. How deep was that shaft did you say?

Mr. SPRINGMEYER.—That shaft was thirty-three feet on the vertical and twenty-nine feet on the incline, was it not?

A. About thirty-three feet on the vertical?

Q. Yes, and twenty-nine feet on the incline?

A. I don't think it was, I think it was about twenty-three or four feet on the vertical.

Q. Never measured it, did you? A. No.

Q. Never measured any of the shafts on any of the claims, did you? A. Oh, yes.

Q. With a tape-line? A. Yes.

Q. Do you mean to tell the jury all the measurements you have given regarding the shafts and cuts on the Midas, Salt Lake No. 3 and Evening Star are accurate, in the sense of tape-line measurements?

[83] A. No, sir, I said approximate.

Q. Did you measure them all with a tape-line?

A. Yes.

Q. Never measured this particular one with a tape-line?

A. Never measured that particular one with a tape-line, no.

(Testimony of John J. Healey.)

Q. You knew that Mr. Ralph had discovered and panned gold in this particular shaft before you located your Homestake placer, didn't you?

A. I knew Mr. Ralph had sunk a shaft on the Kayak placer, not on the Evening Star.

Q. Did you know he had sunk a shaft on the place marked "26" on this map?

A. On the Kayak placer.

Q. Marked "26" on the map, is it not?

A. Marked "26" on the map.

Q. And according to the map here it was within the boundaries of the Evening Star claim, was it not?

A. Yes, sir.

Q. Now, when you located the Homestake placer, you intended to deprive the owners of the Midas and of the Evening Star of any rights they might have in ground that conflicted with yours, did you not?

A. No, sir.

Q. You did not? A. No, sir.

Q. You didn't intend to take this ground that is within the boundaries of the Homestake, and within the boundaries of the Midas from the owner of the Midas and the Evening Star, then?

A. For the placer—no lodes—no lodes on the ground.

Q. You didn't intend to claim the lodes?

A. No, sir, there wasn't any lodes on the ground.

Q. You intended to deprive the owners of the Midas and Evening Star of their property—of the property that conflicted with the Homestake, did you not? A. No.

(Testimony of John J. Healey.)

Q. Did you take subject to the rights of the owner of the Midas [84] and Evening Star?

A. I took it subject to the Government land.

Q. Did you take it subject to the rights of the Midas and Evening Star? A. No, sir.

Q. You intended to take all the ground that was covered within the boundaries of your location, didn't you? A. Yes, sir.

Q. And you knew at the time this shaft had been sunk on the boundaries, or within the boundaries of the Evening Star? A. Yes, sir.

Q. And you knew of the boundaries of both the Midas and Evening Star at the time, did you not?

A. Yes.

Q. You knew also of the boundaries of the Salt Lake No. 3 at the time? A. Yes, sir.

Q. By the way, on any of these cuts made by the owners of the Salt Lake No. 3, Midas and Evening Star, or in any of the shafts, can you say whether the ground was blasting ground or not?

A. Oh, yes.

Q. It was blasting ground? A. On some.

Q. Well, did you ever see the necessity for blasting in wash? A. I have, yes, sir.

Q. You have?

A. Yes, sir; we blast the wash up there every place.

Q. As a miner you mean to tell this jury you use blasting when you work in the wash?

A. Yes, sir, we use blasting right along, every miner in the gulch.

Q. When blasting is used by miners, ordinarily it

(Testimony of John J. Healey.)

is in hard rock, isn't it? A. No, sir.

Q. It is not? A. No, sir.

Q. You said there was a streak about eighteen inches wide that looked like quartzite, on the Evening Star, I believe it was—wasn't that on the Evening Star; where was this streak [85] you said was eighteen inches wide, and looked like it was crushed quartzite?

A. It was in the tunnel on what they call the Midas.

Q. In the Midas tunnel? A. Yes.

Q. Was there any distinction between this eighteen inches of material and the surrounding rock?

A. Nothing, only that it is crushed and leached.

Q. Crushed and leached? A. Yes.

Q. Had a different appearance from the rock outside the walls of the fracture, did it not?

A. It has a different appearance from the solid quartzite on both walls, practically a lower and upper wall.

Q. What is quartzite?

A. Quartzite is a sedimentary rock.

Q. There are a good many sedimentary rocks; what else is it? A. Very true.

Q. Can you give any other definition?

A. It is practically salicious sandstone, in my estimation; I am not a technical or university graduate; I don't know what the technical names would be.

Q. You would not want this jury to absolutely understand in this eighteen inches of material that you found in the tunnel, there were not character-

(Testimony of John J. Healey.)

istics which might distinguish it from the surrounding rock, would you?

A. Well, I have nothing to do with what the jury thinks.

Q. You would not want them to believe that was your opinion? A. Yes, sir; in my opinion.

Q. Would you say positively that the material in this eighteen inches of a seam was not vein—mineral-bearing matter? A. To the best of my judgment.

Q. It was not? A. That it is not. [86]

Q. Did you clean out any of the discovery cuts or shafts on the Evening Star and Midas when you made the examination to see whether they were in mineral matter or in vein matter? A. No, sir.

Q. Just simply looked at the surface?

A. Just looked at the surface and looked at the formation, and dug out the cuts.

Q. Those locations had been made six years prior to your examination of them, had they not?

A. Looked like they were made about twenty.

Q. Looked like they had been made about twenty?

A. Yes.

Q. Pretty well covered in, were they not?

A. Yes, sir.

Q. Would you say positively to this jury that there was no vein of mineral-bearing rock in place at either of the discovery points in those two claims?

A. Yes, sir; absolutely.

Q. Did you take any assays anywhere from these claims? A. I have; yes, sir.

Q. You have taken assays? A. Yes, sir.

(Testimony of John J. Healey.)

Q. Taken them from the discoveries of the Midas and Evening Star? A. Yes.

Q. I think you said a few moments ago, you didn't clean out the workings?

A. Didn't have to clean out the workings?

Q. Just went in there and took them off the surface, did you?

A. I took them right after Mr. Ralph took his.

Q. Did you see him take his?

A. Yes, sir; I was right behind him.

Q. How far behind were you?

A. Two or three hundred feet, and I would go in and see where [87] he took his and I would go in and take mine.

Q. You didn't get any assays? A. No.

Q. Didn't make any assays yourself?

A. No, sir; I am no assayer.

Q. You didn't make any assays?

A. No, sir; I had assays made.

Q. Did you do all this while you were working for Christensen and Dahl? A. No, sir.

Q. Did you lay off while working for Christensen & Dahl? A. I worked on my own ground.

Q. You worked for Christensen and Dahl until about October 20th? A. About October 17th.

Q. Isn't it a fact when you located the Homestake placer, you took your cue from the actions of Davis, Faubert and Van Orman in locating the Guy Davis placer, and thought you would take a chance?

A. No, sir; I had prospected the ground, and had worked in the ground next to it; also there was a loca-

(Testimony of John J. Healey.)

tion covering that ground by Mr. Dahl prior to the time that Mr. Ralph had sunk this shaft, and had prospected the ground—

Q. Well, didn't you—

Mr. THATCHER.—Let him answer the question.

(The reporter reads the question.)

The COURT.—You will simply answer that yes or no. A. No, sir.

The COURT.—I think the rest must go out.

Mr. SPRINGMEYER.—(Q.) You located your Homestake placer two days after the location of the Guy Davis placer, didn't you? [88]

A. I did, when the other location ran out.

Mr. SPRINGMEYER.—That is all.

Redirect Examination.

Mr. THATCHER.—(Q.) Mr. Springmeyer asked you about blasting wash; is it a fact all of the placer workings on bedrock are done by blasting?

A. It is mostly cement gravel, yes.

Q. In sinking a shaft through the wash, is blasting used? A. Yes, sir; in every round.

Q. It is a question in cases of that kind which is cheaper, powder or muscle? A. Yes.

Q. Now, in reference to the placer shaft about which Mr. Springmeyer asked you, over here on the corner, designated as number 26; that shaft is sunk, I understand you, about thirty-three feet to the bedrock?

A. I have been down in it, I should judge it is about twenty-two or three feet down, then it runs off on an incline.

(Testimony of John J. Healey.)

Q. The shaft is sunk perpendicular to the bedrock?

A. To the rim.

Q. To the rim of the bedrock? A. Yes.

Q. Then what does it do?

A. Runs off on the incline, and when they got down to the bottom of the main channel, they ceased work.

Q. Does this drift or incline merely follow the bedrock?

A. Just follows the bedrock on the incline.

Q. Just follows the bedrock? A. Yes. [89]

Q. Did that shaft or incline on it, cut the bedrock at any place or point? A. No.

Q. It was not sunk into the hard rock?

A. No, sir.

Q. Would you call that placer work?

A. I would, yes, sir.

Mr. THATCHER.—That is all.

A JUROR.—I would like to ask the size of that Homestake claim.

A. The Homestake comprises, I should judge, aboue eleven acres, about 660 by 1100.

Mr. THATCHER.—(Q.) You mean 1100 feet long and 660 feet wide? A. Yes, sir.

Q. You don't remember the exact dimensions, Mr. Healey?

A. I don't remember the exact dimensions; I employed a surveyor to survey it off after I put up the monument.

Recross-examination.

Mr. SPRINGMEYER.—I want to ask another question on cross-examination proper, not recross.

(Testimony of John J. Healey.)

Mr. THATCHER.—No objection.

Mr. SPRINGMEYER.—(Q.) At the time you located the Homestake placer, did you know of a shaft about sixteen feet deep that was sunk in the northwest corner of the Midas claim, during the year 1913? A. A shaft about sixteen feet deep?

Q. Yes. A. No, sir. [90]

Q. You don't know of that shaft?

A. No, sir; there ain't none there.

Q. Did you know of a shaft about the same depth that had been sunk in the southwest corner of the Salt Lake No. 3 claim, also during the year 1913?

A. The same depth?

Q. Yes, approximately the same depth.

A. No, sir.

Q. Did you know of any shaft at all on the Salt Lake No. 3?

A. Yes, sir; I know of both shafts that were there, that you just designated.

Q. How deep were they? A. About eight feet.

Q. On both the Midas and the Salt Lake No. 3?

A. Yes, one was on the line between the Midas and the Evening Star.

Q. Part of it was on the Midas?

A. Part of it was on the Midas, and part of it was on the Evening Star.

Q. Did you survey the shaft?

A. I did not; it wasn't worth surveying.

Q. It was partly on the Midas and partly on the Evening Star, how was that?

A. Because you could stand and see the posts on

(Testimony of John J. Healey.)

the ground, you could get your bearings.

Q. You didn't make a survey?

A. Didn't think it required a survey.

Q. You knew that shaft had been sunk on the Midas in 1913, prior to your locating the Homestake placer?

A. No, sir; not on the Midas; I knew it to be on the line between the Midas and the Evening Star. [91]

Q. You knew the shaft was there?

A. I did, yes.

Q. And you knew the shaft referred to was on the Salt Lake No. 3? A. Yes.

Q. And knew work had been done in 1913, prior to your locating the Homestake placer? A. Yes.

Mr. SPRINGMEYER.—That is all.

Redirect Examination.

Mr. THATCHER.—(Q.) Those shafts were about eight feet deep? A. Yes.

Q. What is it worth to sink a shaft of that kind?

A. About twenty dollars.

Q. Did either of them open up the hard rock any place? A. No, sir.

Mr. THATCHER.—That is all.

Recross-examination.

Mr. SPRINGMEYER.—(Q.) What did you say it cost to sink them, about?

A. Oh, it cost about twenty, approximately twenty dollars; I had four men on them.

Q. You had four men on them?

A. Two men on each hole; in fact it wasn't done for location work.

(Testimony of John J. Healey.)

Q. It wasn't done for location work? A. No.

Mr. SPRINGMEYER.—That is all.

The COURT.—(Q.) Did you do any other work on the Homestake than the sinking of the discovery shaft? A. Yes, sir.

Q. What other work did you do there?

A. Sunk a shaft there, approximately forty or forty-two feet.

Q. Where did you sink it, can you go to the map and show? A. Yes, sir. [92]

Mr. THATCHER.—I think he has testified to that.

The COURT.—I know it, but I wanted to get it clear. A. Number 15 (indicating on map).

Q. When did you sink that?

A. I had that sunk, I didn't sink it myself; I had to keep my partner to work; I got the means to have my partner do the work, and he sunk that shaft from about the first of October to about the 15th of October.

Q. Where else did you sink a shaft?

A. I didn't sink any other shaft at that time.

Q. Just those two shafts on the Homestake that you sunk, the discovery shaft and that one—what is the number there? A. Number 15.

Q. That is all? A. Yes, sir.

The COURT.—That is all.

Mr. SPRINGMEYER.—(Q.) The shaft which you say is eight feet deep, and which in my question I put as being sixteen feet deep, and which you say is on the boundary line between the Midas and Evening Star, is not represented on this map, is it?

A. No, sir.

(Testimony of John J. Healey.)

Q. It is left off the map entirely?

A. No, sir; it is filled in.

The COURT.—(Q.) You say it is filled in?

A. It was filled in; just a narrow shaft there about seven or eight feet, and in shipping out ore there—gravel from the mine, it was right in the way of the whip-horse; we couldn't run out on the county road with the whip-horse, so we filled it in—took us about three hours to fill it in—didn't quite get it filled in.

Mr. SPRINGMEYER.—(Q.) Did you measure it before you filled it in? A. Yes.

Q. With a tape-line?

A. Yes, sir; with a tape-line, a steel [93] tape.

Q. Are you sure there was no filling in of it before you measured it? A. Yes, sir; positive of it.

Mr. SPRINGMEYER.—That is all.

Mr. THATCHER.—(Q.) Do you know before you filled that in whether or not Mr. Pickett surveyed it?

A. Yes, sir.

Q. Do you know Mr. R. D. Pickett?

A. Yes, sir.

Q. Do you know where he is? A. Yes, sir.

Q. Where is he? A. He is in Juneau, Alaska.

Q. Have you endeavored to get in touch with him?

A. I have.

Mr. SPRINGMEYER.—Object on the ground it is immaterial.

Mr. THATCHER.—I want to lay the foundation for some other testimony I may want to introduce.

Mr. SPRINGMEYER.—I don't think that is laying the foundation for any testimony.

(Testimony of John J. Healey.)

The COURT.—I don't see it now.

Mr. THATCHER.—(Q.) Have you endeavored to get Mr. Pickett here as a witness in this case?

A. Yes.

Mr. SPRINGMEYER.—Object to that as immaterial, and move the answer be stricken out.

The COURT.—The answer will be stricken out; but you will not be permitted to argue to the jury that they should have had Mr. Pickett here. Of course, if you don't intend to use that argument, this matter is utterly immaterial.

Mr. THATCHER.—It might be material for another purpose, if the Court please. There has already been a case tried in this court between the same parties, or their predecessors in interest; now if Mr. Pickett is not available, and cannot be had, I think we can introduce the testimony of Mr. Pickett, and we will ask [94] to introduce it later in the trial, the testimony given at the previous trial of this case.

Mr. SPRINGMEYER.—We certainly shall resist that.

The COURT.—Then this testimony may stand for that purpose.

Mr. THATCHER.—It is only for that purpose, and when we reach the other, we will dispose of it.

Mr. SPRINGMEYER.—My objection continues on the same ground, your Honor said that the testimony would be allowed?

The COURT.—I said I would allow it to stand, yes.

Mr. SPRINGMEYER.—I except on the grounds stated in our objection.

(Testimony of John J. Healey.)

The COURT.—If you don't intend to urge that it will probably go out, except as it may have some bearing on the suggestion of General Thatcher, that he will try to use that testimony as a basis for introducing testimony given in the previous case. Of course, if that testimony is not introduced, and you do not propose to draw any conclusions from the absence of Mr. Pickett, the whole thing can go out as utterly immaterial.

Mr. THATCHER.—(Q.) Have you been able to secure his attendance as a witness in this case?

A. No, sir.

Mr. THATCHER.—That is all.

Mr. SPRINGMEYER.—(Q.) Have you subpoenaed him? A. No, sir.

Q. Have you made any attempt to take his deposition?

A. I have never met him since he left here at the former trial.

The COURT.—That is not an answer to the question. Have you attempted to take his deposition?

A. No, sir.

Mr. SPRINGMEYER.—You have not authorized your attorneys to take any steps with reference to having his deposition taken, have you?

A. I have, yes, sir. [95]

Q. Have they done so?

A. They have, to the best of their ability.

Q. Do you mean to tell this Court and jury, Mr. Healey, that your attorneys have served any notices, or gone through any of the forms necessary to take

(Testimony of John J. Healey.)

the deposition of Mr. Pickett?

A. I don't know whether they could find him, I couldn't.

The COURT.—I think, Mr. Springmeyer, unless you are doing this merely for cross-examination, that the burden is on them to show that fact, and to prove to the satisfaction of the Court that they have made every effort they could, before the question will be considered as to whether they are entitled to introduce testimony taken in the previous case.

Mr. SPRINGMEYER.—I just asked those few questions in order to save time, because I thought then they would not make the offer.

Mr. THATCHER.—I think we will be able to show. I won't try it all by one witness. I want to call Judge Ray for the same purpose. That is all, Mr. Healey.

**Testimony of L. O. Ray, for Plaintiffs (Recalled).**

Mr. L. O. RAY, recalled by plaintiffs, testified as follows:

Mr. THATCHER.—Q. Judge Ray, you know R. D. Pickett? A. Yes, sir.

Q. Do you know whether or not he was at any time in San Francisco during the last—

A. (Intg.) He was; the last time I saw him there, as near as I can remember, was about a month or six weeks ago.

Q. Did you receive any communication from me with reference to Mr. Pickett? A. I did.

Mr. SPRINGMEYER.—Object to that on the ground it is immaterial. [96]

(Testimony of L. O. Ray.)

The COURT.—He can answer yes or no.

A. I did.

Mr. THATCHER.—(Q.) In response to that communication, did you endeavor to ascertain Mr. Pickett's whereabouts?

A. I tried two different evenings to find Mr. Pickett where he had stayed, at two different places in San Francisco, and could not find him, and the next morning I asked a friend of his, and he said he had left for Alaska, and I wrote you to that effect.

Mr. THATCHER.—You may cross-examine.

Mr. SPRINGMEYER.—No questions.

The COURT.—(Q.) That was all that you did to ascertain the whereabouts of Mr. Pickett?

A. Yes, sir.

Q. You didn't ascertain where in Alaska he was?

A. Yes; I don't remember now, I got the address of him, and I think I sent it to Mr. Thatcher.

Q. Are you quite sure you got the address?

A. I got it as the man gave it to me who knew where he was; that is all I know.

Q. Was there anything else you did?

A. That is all that I did.

Mr. THATCHER.—(Q.) If you got his address you sent it to me in a letter? A. I did, yes.

Q. If the letter does not contain any address, then you didn't get any? A. Yes.

The COURT.—(Q.) Then you are not certain whether you got the address or not?

A. This man gave me the address of where Mr. Pickett told him he would be in Alaska, and if I am

(Testimony of L. O. Ray.)

not mistaken, I wrote that address in the letter I sent to Mr. Thatcher; I have no copy of the address myself, it was only memory that I did it.

Q. Then if I understand you right, you are sure you got the address, but you are not sure whether you sent it to Mr. Thatcher [97] or not?

A. Well, I am not positive on that; I got the address, and have it at home somewheres now, but whether I put it in a letter I sent to him or not, I am not positive of that.

The COURT.—That is all, [98]

**Testimony of Robert L. Phillips, for Plaintiffs.**

Mr. ROBERT L. PHILLIPS, called as a witness on behalf of plaintiffs, after being sworn, testifies as follows:

Direct Examination by Mr. THATCHER.

Q. What is your name? A. Robert L. Phillips.

Q. What is your business, Mr. Phillips?

A. Mining and prospecting.

Q. Where do you live at the present time?

A. Copper Canyon.

Q. How long have you lived there?

A. Since October, 1913.

Q. What time in October?

A. I went in there about the 20th.

Q. About the 20th of October?

A. About the 20th of October, yes, sir.

Q. How long have you been a miner and prospector? A. Since 1893.

Q. Where have you mined and prospected?

(Testimony of Robert L. Phillips.)

A. In Idaho, Oregon, Montana, British Columbia, Washington, California and Nevada.

Q. Have you ever done any placer mining?

A. I have.

Q. Have you quartz mined, too, on lode properties? A. Yes.

Q. Where in Nevada have you prospected and mined?

A. In the southern part and also in the northern part, nearly all over the State, only in the eastern part, I never have in the eastern part.

Q. Where did you prospect in the southern part of the State?

A. In the Bullfrog District, Goldfield District, Tule Canyon District, Quartz Mountain District—it is what they call Quartz Mountain; and down through the Irish Mountain country, I don't know what district that is, though, I believe it is Irish Mountain District.

Q. Have you prospected in the Bullfrog District?

A. Yes.

Q. Have you through these various districts located various claims? [99] A. I have.

Q. Did you make any discoveries in the Bullfrog District and make any locations? A. Yes.

Q. What were the names of those claims?

A. Indiana.

Q. Did that produce some ore?

A. Yes, that produced some ore.

Q. That went into the Indiana Nevada Mining Company? A. Yes, sir.

(Testimony of Robert L. Phillips.)

Q. How long were you over in Copper Canyon, have you been there ever since the middle of October? A. Yes.

Q. Did you prospect that ground over in through that Canyon, and in that vicinity? A. I did.

Q. Do you know the Homestake placer?

A. I do.

Q. Do you know the Guy Davis placer?

A. Yes.

Q. Are you familiar with the boundaries of those claims? A. I am.

Q. Have you been around to the various monuments? A. Yes.

Q. At various times? A. Yes.

Q. Did you ever do any work on the Homestake placer? A. I did.

Q. Whereabouts?

A. It is about forty or fifty feet from the south end line, just west of the wagon road.

Q. Near the wagon road? A. Just west of it.

Q. West of the wagon road. Did you sink any shafts there?

A. Yes, sir, sunk a shaft to bedrock, and drifted.

Q. How deep was that shaft?

A. Thirty-five feet, I believe.

Q. Thirty-five feet to bedrock? A. Yes, sir.

Q. Could you tell what the number of that shaft is as marked on this map; this is "26," which they call the Ralph shaft, where were you from that, up the gulch? A. Up the gulch, and a little east.

Q. About fifty or sixty feet?

(Testimony of Robert L. Phillips.)

A. About fifty or sixty feet. [100]

Q. That would be then, corresponding to shaft "25"? A. Yes, sir.

Q. On Exhibit "A"? A. Yes, sir.

Q. You said that was about thirty feet; what else did you do on that? A. Thirty-five feet—drifting.

Q. Sunk it to bedrock? A. Yes.

Q. What did you find on the bedrock?

A. Found gravel, placer gravel carrying gold.

Q. What values did it carry?

A. What we got there averaged about fifty dollars to the yard.

Q. In your experience as a placer miner, is that pay rock or pay gravel? A. Yes, sir.

Q. Did you do any drifting on that? A. Yes.

Q. How much drifting did you do?

A. Drifted about twelve feet north, and twelve or fifteen feet south.

Q. How did you come to be doing the work on that ground? A. Took a lease on it.

Q. Took a lease on it from whom?

A. From Mr. Scott and Mr. Healey.

A. A lease on a certain portion of the Homestake placer? A. Two hundred feet of it.

Q. Two hundred feet of it where?

A. Two hundred feet on the south end.

The COURT.—(Q.) When did you say you did that work?

A. November, 1913.

Mr. THATCHER.—(Q.) When did you finish that work, when did you reach pay gravel, do you

(Testimony of Robert L. Phillips.)

remember what day in November?

A. I don't know, I can't remember what day, but it was along about the 16th or 17th, I think, that we got to bedrock in that shaft.

Q. When you got to bedrock in that shaft?

A. Yes. [101]

Q. And did you do all the work you have testified prior to Thanksgiving Day, or prior to the first of December? A. Yes.

Q. Every bit of that work was done prior to the first of December, 1913? A. Yes.

Q. You quit working there when the temporary restraining order was served upon you the second time, some time in the latter part of November?

A. Yes.

Q. Did you buy this lease? A. I did.

Q. From whom?

A. From Mr. Healey and Mr. Scott.

Q. What did you pay for it?

A. Five hundred dollars, that is, we made a payment.

Q. How much did you pay?

A. Paid two hundred dollars down.

Q. You paid two hundred dollars down?

A. Yes.

Q. And you still owe three hundred on it?

A. We still owe three hundred on it.

That is by reason of being restrained from the working. A. Yes.

(Testimony of Robert L. Phillips.)

(RECESS FOR FIVE MINUTES. AFTER RECESS.)

Q. The last question was that you had paid two hundred dollars and still owed three hundred dollars on the purchase price of a lease of two hundred feet on the south end of the Homestake? A. Yes.

A. Prior to taking this lease and paying for it, did you go over the ground embraced within the Homestake placer and within the Midas and Evening Star boundaries? A. I did.

Q. What did you do?

A. I traced out the lines, looked up the monuments, and looked to see what work had been done on it.

Q. Did you prospect the ground?

A. Yes, I looked over it to see if there was any vein or lode that might show ore.

Q. Did you find the monuments of the Evening Star? A. I did.

Q. Did you find the location discovery monument of the Evening [102] Star? A. Yes.

Q. This is it I am pointing to now on the map, marked "Location Discovery Monument."

A. Yes.

Q. What was the character of the monument that you found there?

A. It was a white post, it was painted white, a four by four.

Q. Was it marked?

A. It was marked "Location Discovery Evening Star Lode."

(Testimony of Robert L. Phillips.)

Q. What was the character of the formation?

A. It was wash.

Q. Was there hard rock in and about that place?

A. Not very close.

Q. How far? A. About eighty or ninety feet.

Q. About eighty or ninety feet?

A. To the east, or maybe a little northeast.

Q. What was there?

A. There was an open cut there.

Q. What were its dimensions?

A. It was about twenty-four or five feet long, I should judge, and probably six feet wide, about a six or seven foot face.

Q. What was the material that was exposed in that cut? A. Quartzite.

Q. Was there anything in the nature or shape of a lode or vein exposed there? A. No.

Q. Did you pan it? A. No, I didn't pan it.

The COURT.—What is the number of that cut?

Mr. THATCHER.—That is number 20, marked on the map, Exhibit "A." (Q.) Have you ever taken any assays from that sample?

A. I have.

Q. What did you do with that sample?

A. I turned it over to you.

Q. When was the last sample that you took from that ground, what date?

A. On the 15th of the present month.

Q. The 15th of the present month? A. Yes.

[103]

Q. Now on the Evening Star did you find any

321

(Testimony of Robert L. Phillips.)

other work, cut, or excavation?

A. On the south end there was an open cut.

Q. The south end?

A. Near the south end.

Q. Would that correspond to open cut "24" on this map, Exhibit "A"?

A. Yes.

Q. What are the dimensions of that cut?

A. That is about I think twenty-four feet, I measured that once.

Q. What was the condition of that cut the first time you examined it?

A. It was an open cut there, looked like it had been run several years, but had sagebrush growing in it.

Q. What was the character of the material in it?

A. It was a crystallized quartzite, broken up.

Q. What was the color of that dump?

A. White, you could see it quite a ways, noticeable it.

Q. It is a noticeable dump, is it? A. Yes.

Q. Did you examine it to see whether or not there was anything in the nature of a vein or lode exposed in it? A. I did.

Q. Was there? A. No.

Q. Did you ever pan anything from that dump or cut? A. No, I did not.

Q. Did you find any other workings on the Evening Star?

A. I found a shaft down in the wash.

Q. Would that correspond to shaft number 26 on this map, near the westerly side line of the Evening Star? A. Yes.

(Testimony of Robert L. Phillips.)

Q. And southwest of where you sunk your shaft?

A. Yes.

Q. Did you ever go down that shaft? A. I did.

Q. What did you find in that, describe it to the jury?

A. That shaft is sunk down in the gravel, just next to the side of the hill, till it struck the bedrock, then it followed the bedrock off, I believe it is twenty-four feet from the collar of [104] the shaft to the bedrock, where it first struck; it went off on an angle from thirty degrees, or less, it was pretty flat, just like the hill came down, then it flattened off when it struck the channel.

Q. Did that shaft, or incline in the bottom of that shaft pierce or go into the hard rock or formation?

A. No, sir, it followed the hard rock.

Q. It followed the hard rock after it reached it?

A. Yes.

Q. Would that shaft, in your opinion, tend to develop a lode claim? A. No, sir.

Q. Judging from the appearance of that shaft, what was its purpose, if you can say as a miner?

A. For placer, I would judge it was sunk for.

Q. For placer? A. Yes, sir.

The COURT.—(Q.) Do you know when that was sunk?

A. I do not.

Mr. THATCHER.—(Q.) Speaking of this cut number 20, and the formation in it, the formation that it is run in, what is that formation and the character of that material with reference to the gen-

(Testimony of Robert L. Phillips.)

eral hard rock formation, I will call it, over the district?

A. Very little difference, no difference at all from the general formation, because that is the general formation there.

Q. It is what you would designate as a miner, the country rock of that district? A. Yes, sir.

Q. At least in that part of it? A. Yes, sir.

Q. And with reference to cut number 24, was that in country rock, would you call that country rock?

A. Yes, sir.

Q. Did you go over this ground thoroughly, or not? A. I did.

Q. And was this prior to the time that you bought this lease?

A. Yes, sir, I went over it pretty thoroughly before I bought the lease.

Q. Before you bought the lease? A. Yes, sir.

[105]

Q. On the Evening Star did you find anything in the nature of a lode or vein, or which you as a miner would call a lode or vein? A. I did not.

Q. How about the Midas, are you familiar with the Midas ground? A. I am.

Q. Have you been around to the various monuments?

A. Most all of them, I believe all of them.

Q. Do you know where the discovery monument on the Midas is? A. I do.

Q. What is that monument?

A. It is a four by four, painted white.

(Testimony of Robert L. Phillips.)

Q. Anything marked on it?

A. Location discovery of the Midas lode.

Q. What is the character of the rock formation in and about that discovery monument?

A. Wash.

Q. Is there hard rock anywheres near it?

A. Not very near.

Q. How close?

A. Probably a hundred and fifty feet, or something like that.

Q. That would be the nearest? A. Yes.

Q. Where is that?

A. That is above,—to the east.

Q. That is going up the hill?

A. Going up the hill.

Q. Would that correspond about, to number 21 on this map? A. Yes.

Q. Which is marked "Original Discovery Monument Yellow Jacket Lode"? A. Yes.

Q. Did you find any other work near that discovery monument?

A. There is a tunnel southeast from it.

Q. Southeast?

A. Southeast, probably a hundred and eighty or ninety feet, maybe more, I could not say just what the distance was.

Q. Is that tunnel the one that is marked number 22 on Exhibit "A"? A. Yes, sir. [106]

Q. Did you examine that tunnel at that time?

A. I did.

Q. What was the general formation in that tunnel?

(Testimony of Robert L. Phillips.)

A. That is quartzite.

Q. The same as the other country rock there?

A. Yes.

Q. Did you find anything else in that tunnel?

A. There is a fracture in there, along that fracture the formation is decomposed or altered.

Q. Altered? A. Yes.

Mr. SPRINGMEYER.—Did you say "ore"?

A. Altered.

Q. You didn't say "altered ore," simply said "decomposed or altered"? A. Yes.

Mr. THATCHER.—(Q.) Did you examine that rather closely?

A. I did, yes.

Q. Was there anything in that that disclosed to you as a miner, and which you as a miner would consider a vein or lode, at that time? A. No.

Q. That was in hard rock, was it?

A. That was in hard rock, even the tunnel.

Q. That drops down from the location monument, down the hill into the gulch, does it not?

A. Yes, it is nearly on a level with the location monument, but up in the gulch, and starts from the gulch.

Q. Starts from the gulch, and runs into the hill?

A. Into the hill, yes.

Q. What are the dimensions of that tunnel, do you remember? A. At that time?

Q. Yes, sir, at that time.

A. Why, it is in about thirty feet, I believe, altogether.

(Testimony of Robert L. Phillips.)

Q. Was there any crosscut in that at that time?

A. Not at that time, no.

The COURT.—Will you point to that cut, Mr. Thatcher.

Mr. THATCHER.—"22." (Indicates on map.)

[107]

Q. Did you find any other cut on that ground?

A. There was one about four hundred or four hundred and fifty feet to the north of the location monument.

Q. To the north of the location monument, would that correspond to number 17 on this map?

A. Yes.

Q. What were the dimensions of that cut?

A. That was about twelve or fourteen feet long by five feet wide, and probably ten-foot face.

Q. What was the material of which that cut was composed? A. That was in the wash.

Q. All of it in the wash? A. Yes.

Q. Was hard rock exposed there, any place in there? A. No.

Q. You never panned that?

A. No, I didn't pan it.

Q. There was nothing in the shape of a vein or lode exposed there? A. No.

Q. Now going back to the point marked number "21" on this map, what did you find there; that is the point marked "Original Discovery Monument Yellow Jacket Lode."

A. Found a shaft there.

Q. What kind of work?

(Testimony of Robert L. Phillips.)

A. Shaft in hard rock, in the quartzite, probably nine or ten feet deep—I didn't measure the depth of that.

Q. You have been down in that?

A. I have been down in that, it was about five or six feet wide, and probably ten or twelve feet long.

Q. Pretty big cut? A. Pretty big excavation.

Q. What is the rock there? A. Quartzite.

Q. What is the color of it, do you recollect?

A. Kind of red, iron stained quartzite.

Q. Is that the same character of rock—have you testified with [108] reference to this cut 23 over here near the east side line, you haven't as yet, I guess. A. No.

Q. Did you ever pan that? A. No, I did not.

Q. Did you ever take any samples of it?

A. I did.

Q. What did you do with the samples?

The COURT.—(Q.) You took samples from 21 or was it 23?

Mr. THATCHER.—(Q.) You took a sample out of 21? A. Yes.

Q. Now, did you find any other cut on that ground?

A. Well, at what time?

Q. Did you recollect a cut over near the west side line near the center of the claim, on the Midas near the west side center stake? A. Yes.

Q. Do you remember the dimensions of that cut?

A. The dimensions?

Q. The dimensions, yes, about?

The COURT.—That is 23?

(Testimony of Robert L. Phillips.)

Mr. THATCHER.—Twenty-three.

A. It is probably fifteen or eighteen feet long; it is an open cut started, and then a tunnel in there.

Q. What is the character of that cut, the character of the formation?

A. Quartzite, common country rock.

Q. Is that the same country rock? A. Yes.

Q. Was there anything in the nature of a vein or lode exposed there? A. No.

Q. Did you find anything, or were you able to find anything on the Midas claim, at the time you made this examination, or at any examination since, in the nature of a vein or lode, which in your opinion as a miner would justify you to do work on?

A. No, not even to build a monument.

Q. As a lode claim? A. Yes.

Q. Do you know the Guy Davis and Salt Lake No. 3? A. I do. [109]

Q. Did you examine that about the same time when you went in there? A. I did.

Q. Did you prospect it at all?

A. I ran out the lines and looked for the monuments, all I could find of them.

Q. All the monuments you could find?

A. Yes, and the work that had been done.

Q. You have been around the boundaries of the Guy Davis and Salt Lake No. 3, have you?

A. Yes, sir.

Q. Are you familiar with this point, and the ground surrounding it, which is marked on this map "Discovery Monument Salt Lake No. 3 Lode"?

(Testimony of Robert L. Phillips.)

A. Yes.

Q. You know where that is? A. I do.

Q. Were you with any party in making the survey or locating that point?

A. I helped Mr. Pickett survey it, that is, measure it from the north end line to that peg; there was a peg driven there for the location, which they claim as original survey for the Salt Lake No. 3.

Q. What is the character of the material around that location discovery monument on the Salt Lake No. 3? A. It is wash.

Q. What would you say would be the depth of the wash at that point?

A. Well, it would be close to fifty feet, maybe a little more; the shafts above that, one of them is fifty-two feet, and I believe there is one of them that is fifty-four.

Q. Are you working at the present time just above that?

A. I am working at the present time about, I guess it is a thousand feet from that.

Q. Up the gulch? A. Up the gulch, yes.

Q. What is the depth you have to go to get to bedrock there? A. You have to go fifty-five feet.

Q. Is there anybody working about in here at the present time, just north of the north end line of the Salt Lake No. 3? [110]

Mr. SPRINGMEYER.—Object to that as immaterial.

Mr. THATCHER.—I was merely asking for the purpose of showing how far it is to bedrock at that

(Testimony of Robert L. Phillips.)

point, if it is disputed.

The COURT.—It don't seem to me it makes very much difference whether it is forty or fifty or fifty-five feet.

Mr. SPRINGMEYER.—We don't deny this ground is of placer character, but we say it is also of lode character.

Mr. THATCHER.—(Q.) Have you been over the center line of the claim? A. I have.

Q. With whom?

A. I was over it with Mr. Pickett.

Q. Were you over any part of it with Mr. Moran?

A. No, I wasn't over it with Mr. Moran.

Q. Have you been from end to end of that claim?

A. Yes.

Q. Can you tell the jury what the character of the rock from one end of that claim,—from one end line to the other end line, along the lode line or center of the claim, is?

A. Starting from the north end center, and going down through the center of the claim, it is in the gulch till it gets about a little over halfway, and then it begins to go up on the side of the hill in the wash, and then over a little ridge that comes—a hog back—that comes down, then it flattens off again.

Q. Is the country rock or hard rock, or any cropping exposed at any point along that lode line?

A. Not along the lode line, no.

Q. Was there anything in the shape or nature of a lode or cropping at any place along that lode line?

A. No.

(Testimony of Robert L. Phillips.)

Q. With reference to the location monument, how far is it to what we might call hard rock or croppings of country rock, or outcroppings of any kind to the east?

A. Probably be two hundred feet, or may be not so far, or maybe a little more. [111]

Q. Around about that?

A. Around about that, I should think.

Q. To the east of this location monument is wash, this wash formation?

A. If you go directly east it would be farther than that to hard rock; if you go northeast towards the corner of the claim, it would be closer to the hard rock where the formation crops up.

Q. This road, how much of this road is in hard rock?

A. I should judge about half of it in hard rock, maybe more, I am not sure.

Q. That would be the half nearest going up towards the mill? A. Toward the mill.

Q. In going over this ground what did you find with reference to cuts, shafts or excavations at that time? A. That is prior to—

Q. In October, 1913.

A. Well, I would like to make a little statement on that other, as to when that was; there is one cut there I didn't visit at all because it wasn't there on the Midas.

Q. Which cut on the Midas wasn't there at that time?

A. The one on the west side line.

(Testimony of Robert L. Phillips.)

Q. That would be cut number 23? A. Yes.

Q. That cut wasn't there at that time?

A. Not at that time, no.

Q. Do you know when that cut was done?

A. It has been done within the last year?

Q. It was done during the year 1914?

A. Yes, some time about that time, that is, during that year.

Q. Could you say whether or not it was done after the trial of this action, the former trial in this court?

A. It was.

Q. After that? A. It was.

Q. On the Salt Lake No. 3 what excavations or work did you find at that time?

A. I found an excavation—the road was excavated; [112] I found the road excavated from the canyon up to the mill, this other road; the excavation for the mill and tanks, of course was there, and there was an excavation near a cabin.

The COURT.—(Q.) Near what?

A. If this is the cabin here (indicates on map) it was near a little shack that stood there, but just a little above.

Mr. THATCHER.—(Q.) What was the character of that excavation?

A. It was in the wash.

Q. How big was it, what were its dimensions?

A. Probably ten or twelve feet long, nine or ten feet wide.

Q. What did it look like?

(Testimony of Robert L. Phillips.)

A. It was about two and a half or three feet deep, something like that.

Q. What did it look like it had been used for?

A. For some kind of a little building or tent.

Q. Graded out for the foundation of a building or tent? A. Yes.

Q. What else did you find up there?

A. I found a well, which I first took to be a shaft, down here some place. (Indicates on map.)

Q. Do you know how deep that was?

A. No, I don't.

Q. Don't know anything about that?

A. No, I don't.

The COURT.—(Q.) What is the number of the well?

Mr. THATCHER.—(Q.) Do you know what the number of that is on the map?

A. About the location of 29, I believe.

Q. Now, what other work did you find there?

A. They were working in another shaft south of where that building was.

Q. Other than works which were being worked by Faubert, Davis, Williams and Sheehy on that ground?

A. There was a little shaft right near that well.

Q. How big was that shaft, do you remember? [113]

A. Ten feet deep, about four by six, something like that.

Q. What was it in? A. In the wash.

Q. Any hard rock exposed in it? A. No.

(Testimony of Robert L. Phillips.)

Q. Was there anything on the ground at that time which showed that any mining operations had been carried on within the boundaries of the Salt Lake No. 3? A. None whatever.

Q. Did you prospect over that ground to ascertain whether or not there were any ledges? A. I did.

Q. Have you done so since that time?

A. I have.

Q. Did you find anything which in your opinion would constitute a ledge? A. I did not.

Q. Within your term of it as a miner?

A. No, sir.

Q. I call your attention to a point marked on this map as 21, which is likewise designated as the "Original Discovery Monument of the Yellow Jacket Lode," you have been to that point, have you?

A. I have several times.

Q. Subsequent to your purchasing the ground?

A. Yes—subsequent?

Q. After you had taken an interest in it?

A. Yes, several times.

Q. What did you find up there; was there anything in the nature of a monument?

A. Yes, there was a monument stands on the south end of the hole.

Q. On the south end?

A. Right at the edge of the shaft on the south end; it is built up out of the rock that came out of the shaft.

Q. Did you find anything in that monument?

A. I did not.

(Testimony of Robert L. Phillips.)

Q. Well, were you present when anything was found? A. I was.

Q. Who else was present?

A. Mr. Grew and Mr. Wilson and Mr. Lamb. [114]

Q. What is Mr. Lamb's first name?

A. Clarence; and I don't know, I can't remember who all.

Q. Was Mr. Healey present?

A. Mr. Healey was the man that found the notice in the tin can.

Q. Did you see him find it? A. I did.

Q. You found a notice in a tin can? A. Yes.

Q. I show you a paper, and ask you to look at it. (Hands paper to witness.) Is that the notice which was found in the tin can at that monument?

A. Yes, sir.

Mr. THATCHER.—I offer it in evidence, if the Court please.

Mr. SPRINGMEYER.—We object to the introduction of the paper on the ground that there is no evidence to show that the notice at the time it was found was at the place where it was placed by the original locator; on the further ground it is not within the issues and is not material, and it is not binding on the owners or the defendant, or upon the locators of the claim and is not probative of any of the issues in this case; it might have been placed there by any one, and even if it was there, it is of no probative value whatever.

The COURT.—Do you propose to follow this up

by proof showing at the time the Midas was located the Yellow Jacket was a valid subsisting location?

Mr. THATCHER.—I think so, if the Court please, I think we can show that.

The COURT.—And show that the work was done on it and where its boundaries were, and so on?

Mr. THATCHER.—I am going to show that as near as I can from the location certificates found on the ground.

The COURT.—Can you show that the discovery work was done?

Mr. THATCHER.—I will show a location certificate to that effect, [115] original location certificate, describing it.

The COURT.—Will you show that the assessment work was done?

Mr. THATCHER.—I won't need to do that if they were both located within the same year, I won't have to show that any subsequent work was done.

The COURT.—I will allow it to be admitted, but it will not be shown to the jury.

Mr. SPRINGMEYER.—Before the ruling is made, I would like to add a further ground to my objection, that there is no proof of the genuineness of the instrument or the signature; it may have been purely a self-serving declaration placed there by any outsider.

The COURT.—Do you propose to rely on any testimony except the certificate itself and the notice?

Mr. THATCHER.—No, sir; the notice and the certificate.

The COURT.—Well, I will take them and look them over.

Mr. SPRINGMEYER.—Did your Honor make a ruling admitting them in evidence?

The COURT.—I said I would admit it—simply a *pro forma* ruling admitting it; none of those documents will be read to the jury until I have had time to examine them.

Mr. THATCHER.—I am willing to have it marked for identification and it can be admitted later, if the Court so desires.

(The notice is marked Plaintiffs' Exhibit "G" for identification.)

Mr. THATCHER.—I would like to offer for the same purpose a certified copy of the location certificate; I don't want to offer the amended, there is an amended one attached to it; I want to offer the certified copy of the location certification of the Yellow Jacket.

Mr. SPRINGMEYER.—We object to that upon the same grounds. [116]

Mr. THATCHER.—I am willing to have it marked for identification, and offered with the location certificate.

(Certified copy of location certificate marked Plaintiffs' Exhibit "H" for Identification.)

The COURT.—This don't show that there was any discovery, does it?

Mr. THATCHER.—No, sir.

The COURT.—Proceed.

Mr. THATCHER.—(Q.) Have you examined in

(Testimony of Robert L. Phillips.)

and around the mill? A. I have.

Q. How closely have you done so?

A. I have looked it over pretty thoroughly.

Q. Have you been in the mill itself? A. I have.

Q. And in the excavations for the mill?

A. Yes, sir.

Q. In examining that have you at any time found or discovered a vein or lode in place in there?

A. No, sir.

Q. You worked on the lower end of the ground, placer mining? A. Yes.

Q. You observed the placer mining, and did you notice the clean-ups made by Murray Scott and Healey? A. Yes.

Q. Were you down in their shaft?

A. I was, I worked in there.

Q. You worked in there? A. I worked in there.

Q. Saw the gold come out? A. Yes.

Q. Have you ever been in the shafts dug by Faubert and Van Orman?

A. No, I never was in that shaft.

Q. Have you seen the rock and gravel come out of any of those shafts? A. Yes.

Q. Have you worked above in the channel?

A. Yes.

Q. Above this claim?

A. Above this claim, clear up to the head.

Q. North of it? A. Yes. [117]

Q. Have you formed any opinion or made any estimates of the value of these two claims for placer purposes?

(Testimony of Robert L. Phillips.)

A. Yes, we have made estimates on it several times.

Q. Do you consider them valuable for placer purposes? A. I do, yes.

Q. To what extent do you think they would be valuable?

A. Well, I figure that up approximately a hundred thousand dollars, net, in the two claims.

Q. A hundred thousand dollars net in the two claims A. Yes.

Q. That is for placer purposes?

A. For placer purposes.

Mr. THATCHER.—You may cross-examine.

Cross-examination.

Mr. SPRINGMEYER.—(Q). It is a valuable property, isn't it, Mr. Phillips? A. Yes.

Q. Worth a lawsuit or two? A. Yes.

Q. And I suppose inasmuch as it was so valuable, you made very careful examinations of all these claims, didn't you? A. I did.

Q. Very careful examinations of all the workings?

A. Yes.

Q. On the lode claims as well as within the boundaries of the two placer claims? A. Yes.

Q. You say the road on the northeast side of Salt Lake No. 3 was excavated?

A. The road was at that time, yes.

Q. And you pointed out the road when you gave your testimony? A. Yes.

Q. How was that excavated? A. The road?

Q. Yes. A. How was it excavated?

(Testimony of Robert L. Phillips.)

Q. Yes.

A. Excavated in a hillside just the same as you would any other road.

Q. Was it excavated in the wash or in the hard rock?

A. Some of it where it started was in the wash, the other was in hard rock. [118]

A. Isn't it a fact that nearly all of the road on Salt Lake No. 3 is in solid formation?

A. There is part of it, not all of it.

Q. Part of it on Salt Lake No. 3 is in hard rock, isn't it? A. Not all of it.

Q. Is the greater part of it in the hard rock?

A. There is part of it, I could not say how much of it, because I never measured it.

Q. Isn't it a fact that all of it is in hard rock?

A. No, I don't think so.

Q. Isn't it a fact that the greater part of it is in hard rock?

A. The majority of it might be; I said about half of it, I thought.

Q. When you went over the Salt Lake No. 3 so carefully, did you notice an outcrop of hard rock about from ten to fifteen feet, from the point marked on this map as the discovery point? A. How far?

Q. From ten to fifteen or twenty feet?

A. No, sir.

Q. A little south and west, or perhaps south and a little west of that point marked on the map as the discovery point? A. No.

Q. Would you say positively there is no such out-

(Testimony of Robert L. Phillips.)

crop on that claim? A. Not that close.

Q. Well, might it be a little ways farther?

A. The nearest outcrop is in the gulch, just above the house.

Q. You are positive of that, are you?

A. That would be west.

Q. Would you say positively, Mr. Phillips, that there is not an outcrop of the sort I have mentioned within forty feet? A. Within what?

Q. Within forty feet of the point marked on that map as the discovery point of Salt Lake No. 3.

A. I am satisfied there is none there.

Q. You are satisfied there is none? A. Yes.

Q. You would not say positively, of course, would you? [119]

A. Yes, if it is there it has come up since I left there, I will say it that way; I have been over the ground thoroughly, and I never seen one; it is all wash over there.

Q. It is all wash?

A. There is no cropping within forty feet southwest.

Q. Could you go to that ground and point out the exact spot where this location, or where this discovery point is marked on the map?

A. Can I go over the claim?

Q. Yes. A. Yes.

Q. Can you point out that exact spot?

A. I can.

Q. That is in the canyon in such a position that cloudbursts might change the physical conditions

(Testimony of Robert L. Phillips.)

very quickly, is it not?

A. Yes, but the cloudburst would have to come forty or fifty years ago; there is no signs of a cloudburst in the gulch any place, and the monument was supposed to have been rebuilt there about sixteen years ago.

Q. How long have you lived in Copper Canyon?

A. Since October, 1913.

Q. You would not know whether it was a fact a tremendous cloudburst occurred there three years ago, and another eight years ago, would you?

A. Well, there is no evidence of it; there is buildings right in the canyon that have been there ever since I have been there.

Q. You don't know whether or not it is a fact that those buildings were severely damaged, and that the pipe-line was put out of place by cloudbursts, do you?

A. I didn't see any buildings damaged there by cloudburst.

Q. Isn't it a fact also that because of the cloudbursts in that canyon the position of the road on Salt Lake No. 3 has been changed; do you know that?

A. No, I don't know that.

Q. Did you find any sign there of an old road? [120]

A. Yes, I am working right along the old road now, on another claim.

Q. How about on the Salt Lake No. 3, did you find any evidence of any old road there?

A. Yes, there is evidence of an old road, but there

(Testimony of Robert L. Phillips.)

is no evidence of anything only just the water running down there—no evidence of cloudbursts.

Q. Not much left of the old road, is there?

A. It has not been used for several years, it don't look like, and the rains would even wash that out.

Q. Now you said there was a fracture or seam in the Midas tunnel? A. Yes.

Q. Isn't it a fact that fractures and seams often lead to large ore bodies?

A. They don't when they play out like that one.

Q. Isn't it a fact that a number of small fractures may open up into a large vein?

A. No, I have not found it that way in my experience.

Q. You haven't found it that way? A. No.

Q. Isn't it a fact that a number of fractures on the surface of mining ground are a good indication, and would warrant a miner in developing them in the hope of finding a large vein below, is that true?

A. I don't understand your question.

Q. Isn't it a fact that a number of fractures or seams would warrant a miner in developing, in the hope that they would come together and form a large vein below? A. No.

Q. Sometimes surface indications don't go very far in mining, do they, Mr. Phillips?

A. Well, they generally do; generally where you have—

Q. (Intg.) Well, sometimes they don't; just answer that yes or no.

A. Well, I can't answer it yes or no; sometimes

(Testimony of Robert L. Phillips.)

when you have it on the surface it goes into seams when you get below; more so when you have it in seams on the surface and go below, it [121] generally plays out.

Q. Generally does, but not always?

A. Well, most always; that has always been my own experience.

Q. Sometimes surface indications are not at all good, and a valuable mine may be discovered on the ground, is not that true?

A. Well, I have never seen any.

Q. Are you familiar with Goldfield? A. Yes.

Q. Do you know the history of all the claims in Goldfield? A. I know the history of part of it.

Q. Isn't it a fact that some of the best claims in Goldfield were not located, and turned down by miners, because the surface indications were not good?

A. I don't know; they were all located when I went in there.

Q. You don't know whether that is a fact or not?

A. I don't know any place where they found ore that wasn't located when I went in there.

Q. You don't know whether it is a fact that the Mohawk claim and some other valuable claims in Goldfield, were not located by the first men in Goldfield for the reason the surface indications were not good?

A. I will have to differ with you, because I know they were located by the first men in there—they were said to be, of course I wasn't there at that time.

Q. You don't know, then?

(Testimony of Robert L. Phillips.)

A. I could not say for positive, except those persons had the ground, and they were located.

Q. You used the term "fracture"; is not a vein simply a fracture?

A. No, not what a fracture is termed; you might have a fracture zone through the formation, and not have any mineral; it don't show you have the mineral because you have a fracture; most of the formations are fractured both ways, with the formation and across.

Q. The fractures are with the formation, you say?

[122] A. Sometimes both ways, I say.

Q. What would you say a vein was, a fracture, or a seam, or a fracture zone?

A. Well, a vein is a fissure, a fracture on a larger scale, and more defined.

Q. That is it; I think we understand each other. A vein is a fracture on a larger scale, when the crack, so to speak, is small, it is called a fracture, isn't it?

A. No, there is a difference in a fracture and a vein.

Q. Well, give it again then; you said a minute ago that a vein was a large fracture, or a fracture on a large scale.

A. It is a large opening; it is a fissure; not all veins are fissures, of course.

Q. If a fracture is found in igneous rock, would you say that it might not develop into a mineral-bearing vein, if a mineral-bearing vein is of considerable size?

A. Well, it depends on the fracture or the opening,

(Testimony of Robert L. Phillips.)

or the fissure, rather; if it is just a fracture I would say you would not find it.

Q. No matter whether there was mineral in the fracture or not? A. No.

Q. It would not matter to you?

A. You may find a fracture that has mineral in, but it won't develop into ore.

Q. You would say in your opinion if a fracture contained mineral, that it would not be worth while to work it as a mining property? A. No.

Q. As a miner that is the policy you would follow?

A. Yes, sir.

Q. Even if the mineral was in place within well-defined walls of the fracture? A. Yes.

Q. Isn't it a fact, Mr. Phillips, that miners and mining men [123] nearly always disagree as to what property is worth while to locate as a mining claim, or to develop as a mining claim?

A. Not so much on the locating as on the developing.

Q. But they do differ on the matter of locating?

A. They differ on everything.

Q. And what one miner might think was worthless, and not worth locating, another miner or prospector might come along and think he had made a great discovery upon, is not that true?

A. No, I don't think he would think he had made any great discovery.

Q. Well, he might do so.

A. Well, he might, I can't tell you what a man might do.

(Testimony of Robert L. Phillips.)

Q. I am simply bringing out the fact, if it is a fact, that prospectors and miners disagree.

A. Certainly, they disagree.

Q. As to what is worth while in the way of locating as a mining claim? A. Yes.

Q. Very often it happens that a number of prospectors pass over ground and don't do anything about it, and another man comes along, perhaps a year or a day, even, afterwards, and locates it; that is true, is it not?

A. That is true, but the last fellow doesn't always see what the first fellow saw.

Q. That is the history of all mining claims?

A. Certainly it is the history, that one man may see something the other man don't see.

Q. And the two men may see the same thing and disagree as to its merits, may they not? A. Yes.

Q. Now when you made the examination of these three lode claims, did you do any panning?

A. No, I did not.

Q. You didn't do any panning? A. No.

Q. Did you clean out any of the cuts or shafts to see whether they contained mineral?

A. No, I could see without cleaning [124] them out.

Q. Then the examination you made, and upon which you based your opinion that these three lode claims are not valuable as lode claims, is simply from a rough surface examination?

A. Well, I can't explain; I can't answer that question all at once, if you want to know my opinion or why I did that.

(Testimony of Robert L. Phillips.)

The COURT.—Read the question.

(The reporter reads the question.)

Mr. SPRINGMEYER.—(Q.) Is that the fact, yes or no?

A. Yes, it was from an investigation I made, an examination.

Q. Now if you opened up the discovery points, and had pannings taken and assays made, it is not impossible that you would change your opinion, is it, Mr. Phillips? A. Yes, I have done that since.

Q. Suppose you had made an assay of the vein in the Midas claim? A. On what?

Q. Of the vein or fracture, as you call it, in the tunnel on the Midas claim, and found that it carried values, you would say then that that should be locatable as a lode claim, wouldn't you?

A. No, I would not.

Q. You would not?

A. No, it takes other conditions besides the fracture.

Q. You say it takes something besides value?

A. Yes, it takes something besides fracture to make it valuable.

Q. You said this fracture was between well defined walls, and that it contained decomposed or altered material so that it was in place; is not that correct?

A. I didn't say what it contained; you couldn't get a fracture without having walls; and what that filling is,—it depends on what the filling is of course, and how large it is; but if it is just a fracture in the formation, [125] it might be crossways, or might

(Testimony of Robert L. Phillips.)

be lengthways; there is a difference in the fractures.

Q. So I may understand you, didn't you testify in this fracture in the tunnel on the Midas the filling was decomposed material?

A. Yes, I said it was decomposed.

Q. That is to say, it was material of a different character than the walls on each side of the fracture?

A. No, it is not different material, because it is the same material there, but it is decomposed, it is altered.

Q. It is altered? A. Yes.

Q. It has a different appearance than the material on each side of the fracture wall? A. Yes.

Q. Then it is in place, is it not, Mr. Phillips?

A. Yes, it is in place.

Q. In place? A. Yes.

Q. You would give it as your opinion to this jury, that possessing those qualities of being in a fracture, and in place, and in addition carrying values, that it would not be locatable or workable as a mining claim, as a lode mining claim? A. No.

Q. It would not? A. It would not.

Mr. SPRINGMEYER.—That is all.

Redirect Examination.

Mr. THATCHER.—(Q.) If you found a fracture that had values in it, what would you do with it?

A. Well, it depends on the character of it.

Q. Well, what would you do?

A. I would not do anything with it if it was just a fracture in the formation, and didn't extend any place; if it was a cross-fracture, or just a fracture in

(Testimony of Robert L. Phillips.)

the formation, if it was in the country rock I would walk off and leave it.

Q. This is all sedimentary rock up here; there is no igneous rock [126] up here on any of these claims? A. No, I have never seen any.

Mr. THATCHER.—That is all.

Recross-examination.

Mr. SPRINGMEYER.—(Q.) Well, veins that pay to work as mines sometimes occur even in sedimentary rocks, don't they? A. Yes.

Q. They don't occur as frequently as in igneous or metamorphic rocks, but they do occur in sedimentary rocks, don't they?

A. It depends on the district where they are.

Q. Then the mere fact that the formation was sedimentary is not conclusive?

A. It is not conclusive that there could not be veins there.

Mr. SPRINGMEYER.—That is all.

JUROR (Mr. HIBBARD).—(Q.) What is the definition of igneous?

Mr. THATCHER.—Fire; I think Mr. Moran will explain it to you. I will ask him to. [127]

**Testimony of W. T. Moran, for Plaintiffs (Recalled).**

Mr. W. T. MORAN, recalled as a witness for plaintiffs, testified as follows:

Direct Examination by Mr. THATCHER.

Q. Did you go over this ground the other day when you were making the survey? A. Yes, sir.

Q. Did you examine the cuts and excavations upon the ground? A. I did.

(Testimony of W. T. Moran.)

Q. Did you pay particular attention to the lode line of this claim, and the formation of it?

A. I did.

Q. Taking from the middle of the north end line to the south end line, along the center of the claim, which I will call the lode line, the theoretical lode line, will you tell me what is disclosed through that length?

A. It is all a surface wash, surface material.

Q. Along that lode line, from one end of the claim to the other, is there disclosed a vein or lode?

A. None whatever.

Q. Was there disclosed hard rock? A. No, sir.

Q. Is it all wash? A. Yes.

Q. At the discovery monument what is the character of the formation there?

A. Why, that is a wash, surface material covered with brush.

Q. Covered with brush? A. Yes.

Q. Were you near and around the mill?

A. I was.

Q. Did you observe the formation there?

A. Yes, sir.

Q. Were there any stains, chemical stains there in the rock?

A. There were chemical stains on the rock that is covered by the mill.

Q. The rock that is covered by the mill?

A. Yes.

Q. And below it to some extent? A. Yes.

(Testimony of W. T. Moran.)

Q. What were those made from? [128]

A. Why, they were evidently made from a solution of copper sulphate.

Q. The leaching from the mill?

A. Leaching from the mill, a great deal of sulphuric acid is used, I believe, and the ore is reduced to copper sulphate, which is ordinary bluestone.

Q. I call your attention to the shaft marked 28 on the Salt Lake No. 3 and Guy Davis, and ask you did you tie that in? A. I did.

Q. How did you come to tie that in, from any other memoranda that was shown you?

A. Why, from the official survey plats; I noticed a tie from the northwest corner of the Salt Lake No. 2 to what purported to be the discovery shaft.

Q. And was 28 marked on the patent plat as discovery shaft? A. It was.

Q. What did you find at 28?

A. It was a shallow excavation, covered by an outhouse.

Q. Covered by an outhouse? A. Yes.

Q. How deep was it, do you know?

A. It is five feet deep.

Q. Five feet deep; could you give the other dimensions of it? A. Yes, sir.

Q. What were they?

A. I don't recall that exactly, I have them in the memoranda, but the cubical contents was a hundred and forty cubic feet.

The COURT.—That is the discovery shaft?

Mr. THATCHER.—So marked on the patent plat.

(Testimony of W. T. Moran.)

WITNESS.—It is four feet wide, seven feet long and five feet deep.

Q. Four by seven by five feet deep?

A. Yes, sir.

Q. Did you find on this ground any other excavation?

A. Yes, sir, there are quite a number. [129]

Q. Did you examine in and about the mill?

A. Yes, sir.

Q. Did you examine that to ascertain whether there was any lode or vein in and around that mill?

A. I did.

Q. Did you find any? A. No, sir.

Q. Did you go over the Midas location?

A. Yes, sir.

Q. I want to ask you in these various openings that you looked at there on the ground, did you find in any of those openings anything in the nature or form of a vein, which you would consider as such?

A. No, sir.

The COURT.—When you use the work "ground," do you mean all three claims?

Mr. THATCHER.—No, I mean just the Salt Lake No. 3, Mr. Moran.

A. Yes.

Q. Your answer stands? A. Yes.

The COURT.—As to the Salt Lake No. 3?

Mr. THATCHER.—As to the Salt Lake No. 3, Guy Davis contest.

Q. Now, with reference to the Midas, did you go over that? A. I did.

(Testimony of W. T. Moran.)

Q. I call your attention to a point marked "21," shaft, did you examine that shaft? A. I did.

Q. Did you go down in the bottom of it?

A. Yes, sir.

Q. What was the general character of the formation disclosed by that shaft?

A. It was all quartzite.

Q. It was all quartzite? A. Yes.

Q. Was anything else disclosed at any point in that shaft? A. No.

Q. Was there anything in the nature of a vein or lode disclosed there? A. No, sir.

Q. I call your attention to the discovery monument on the Midas lode, what was the character of the formation in and about that discovery monument? A. It was earth—fill material. [130]

Q. Earth and fill material? A. Yes.

Q. Were there any croppings there?

A. There were none.

Q. What is the nearest cropping coming to the surface of hard rock to that?

A. I believe it is at that shaft, I don't recall the number of it.

Q. Twenty-one.

A. It is possibly a hundred or a hundred and twenty-five feet.

Q. Easterly? A. Easterly.

Q. That is the one marked on this map "21"?

A. Yes, sir.

Q. Did you examine "22," the tunnel?

A. I did.

(Testimony of W. T. Moran.)

Q. That is in hard rock, is it not? A. Yes.

Q. What is the length of that tunnel?

A. I have it in that memoranda here, if you will hand it to me. (Paper handed to witness.) Is that marked 22?

Q. That is marked 22, yes.

A. Tunnel seventy-five feet in length.

Q. That is at the time you made this survey?

A. That is the tunnel proper.

Q. That is in hard rock? A. Yes, sir.

Q. What was the general character of the formation there? A. It is quartzite.

Q. Anything in the nature of a vein or slip there?

A. Why, there is a fracture there about sixteen or eighteen inches in width.

Q. About how far in from the mouth of the tunnel is that?

A. It lays pretty flat, there is a drift on this fracture of about seventeen or eighteen feet from the mouth of the tunnel.

Q. A drift on it, that is on the strike of it?

A. Yes, sir.

Q. That is indicated by the little points that go out, marked on the tunnel? A. Yes, sir. [131]

Q. Well, does the tunnel somewhat follow it on its dip? A. Yes, sir.

Q. Is that by reason of its flatness?

A. Yes, sir.

Q. How far is it exposed on its dip?

A. It comes pretty well out towards the mouth of the tunnel.

(Testimony of W. T. Moran.)

Q. What is the material within the fracture as compared with that on the sides?

A. Why, it is quartzite.

Q. Did you make any examination of it particularly? A. Yes, sir.

Q. What is it?

A. It is quartzite, seems to occur in slips or small fractures.

Q. The same material as is on the two walls?

A. Yes, it is ground up a little more, has a little different appearance.

Q. With reference to number 17 which is marked on this map, do you remember what that is?

A. That is a cut in the wash.

Q. Is that all in the wash? A. Yes.

Q. Is hard rock exposed any place in that?

A. None whatever.

Q. I call your attention to number 20 on the Evening Star—this last was on the Midas—and ask you what that is?

A. That is an open cut, and a shaft and a crosscut; the shaft is sunk in the cut, and there is a crosscut, possibly ten feet in length, in the bottom of this shaft, a six or eight-foot shaft.

Q. Confining yourself to the cut itself, what is the character of the material in that cut?

A. It is quartzite, it had a brown stain.

Q. Is there anything but quartzite in there?

A. That is all.

Q. Is there anything that discloses a vein or lode in that cut? A. No, sir. [132]

(Testimony of W. T. Moran.)

Q. Now, calling your attention to number 24 on the south end of the Evening Star, what is that?

A. It is a white material, I think it is an altered sandstone.

Q. How long is that cut?

A. What number is that, please?

Q. That is 24. A. Twenty-five feet in length.

Q. Twenty-five feet in length; is there any vein or lode disclosed in that, in your opinion?

A. No, sir.

Q. Now, referring again, or calling your attention to the discovery monument on the Evening Star lode, what is the character of the material in and about that monument?

A. That is an earth fill, also.

Q. An earth fill? A. Yes.

Q. Is it a wash with any croppings about it?

A. No croppings at all.

Q. What is the nearest cropping of hard rock that can be found to that?

A. It is in this cut number 20, about ninety feet easterly.

Q. About ninety feet easterly? A. Yes.

Q. All of this country in and around this, and at least for ninety feet or more, is all in the wash?

A. Yes, sir.

Q. No vein or lode is exposed at any point there?

A. No, sir.

Q. Were the placer shafts pointed out to you?

A. Yes, sir.

Q. Eliminating the placer shafts sunk by Healey,

(Testimony of W. T. Moran.)

or by Faubert, Van Orman, and Sheehy and Williams, and such placer shafts as were on the ground at that time—eliminating those from your consideration, is there any work in the nature of shafts, cuts or cross-cuts upon that ground, which in your judgment constitute lode mining, or which would tend to develop a lode mine?

A. No, sir, I would not say there was.

Q. Mr. Hubbard asked what was the difference between igneous rock and sedimentary rock. [133]

Mr. HUBBARD (JUROR).—What is the definition of igneous?

Mr. THATCHER.—(Q.) And sedimentary, will you explain that?

A. Well, the igneous is practically an eruptive rock, the result of fire; most of the older rock are igneous rock. Sedimentary rock is a second rock formed later by water action, it is a deposit.

(After the usual admonition to the jury, an adjournment is taken at 4:40 P. M. until to-morrow, May 27th, 1915, at 9 o'clock A. M.) [134]

Thursday, May 27th, 1915.

Court convened 9 A. M.

(All parties present.)

Direct Examination of Mr. W. T. MORAN,

Resumed.

Mr. THATCHER.—(Q.) Mr. Moran, is the discovery monument on the Salt Lake No. 3, or the point marked "Discovery Monument," located at the lowest point in the gulch? A. No, sir.

Q. Where is the lowest point in the gulch across

(Testimony of W. T. Moran.)

the claim through the discovery monument?

A. It is about seventy-five feet east of the discovery point.

Q. About seventy-five feet east of the discovery point? A. Yes, sir.

Q. The gulch then continues, as the gulch itself, about seventy-five feet further east? A. Yes.

Q. Then does it begin to raise from there on?

A. Yes, sir.

Mr. THATCHER.—That is all; you may cross-examine.

Cross-examination.

Mr. SPRINGMEYER.—(Q.) You said that the lowest point was about seventy-five feet east?

A. Yes, sir, of the discovery point.

Q. Don't you mean seventy-five feet west?

A. No, seventy-five feet east; the ground rises from that point seventy-five feet east toward the discovery monument, and continues on up the hill.

Q. Did you make contour lines on your map to indicate the points? A. It wasn't necessary.

Q. You didn't make the contour lines, did you?

A. No, I didn't; it wasn't necessary to determine that; there was a very distinct difference.

Q. You are simply stating this according to the best of your [135] recollection at the present time, without any positive knowledge, are you not, Mr. Moran? A. Oh, yes, I am certain of it.

Q. Now you said that quartzite is the country rock on each of these three claims, did you not?

A. Yes, sir.

(Testimony of W. T. Moran.)

Q. And you said that the only evidences of lodes that you found are the fracture zones, or sheared planes, as you called them, in the quartzite, didn't you? A. Only evidence of lodes?

Q. Yes. A. Yes.

Q. There was no other evidence whatever, except the fracture zones and the sheared planes in this quartzite? A. No, sir, not on these three claims.

Q. Now you made a field examination, I presume?

A. Yes.

Q. To determine the character of the country rock on each of these claims; as a mining engineer you simply made the same sort of an examination a mining engineer usually does when he goes to examine a mining property, did you not?

A. I made quite a careful examination; I would not say that I made a technical, geological examination.

Q. Well, did you make any tests to determine whether it was quartzite or any other formation?

A. No, I made no microscopic tests.

Q. What tests did you make, if any?

A. Well, I can't say that I made any particular tests, but from the character of the rock, it is either quartzite or something very similar; it could not be anything very different, you can see that from mere observation.

Q. Did you make any tests at all that led you to conclude that it was quartzite, or did you simply draw that conclusion from your general observation? A. I drew that from my observation.

(Testimony of W. T. Moran.)

Q. Just simply from your observation?

A. Yes, sir.

Q. Now, the mere fact that these sheared zones or fractures are [136] in quartzite, is nothing detrimental to the property as a mining property, is it?

A. Well, it is possible to develop ore bodies in such formation, but such formations are not favorable to it.

Q. You would not say it was necessarily fatal to the property developing into a mine, would you?

A. I think there have been mines developed in sedimentary rocks of that nature.

Q. Some of the largest mines in the world in fracture zones, in the quartzite, are there not, Mr. Moran? A. I don't recall any right now.

Q. Well, did you hear of the Bunker Hill and Sullivan mine in Coeur d'Alene District in Idaho?

A. Yes, sir.

Q. In what country formation is that?

A. I could not say, I was never on that property.

Q. You never were on it? A. No, sir.

Q. Don't you know that the conditions there are almost precisely similar to the conditions that you say exist on these three claims?

A. No, sir, I don't.

Q. Isn't it a fact that, generally speaking, a careful mining man will not turn down properties simply because there are shear zones or fracture planes in quartzite?

A. Well, if he had high-grade ore to work on to

(Testimony of W. T. Moran.)

start with, he would probably continue on it in a formation of that kind.

Q. Even if the shear zones are tight, the ore may be formed by replacement in those zones or fractures, isn't that a fact? A. Yes, it may be.

Q. Well, if the fact is as I say with reference to this Bunker Hill mine in the Coeur d'Alene District, would you be inclined to change your opinion as to the value of these claims as mining property having a potential value? [137]

A. I would not consider them of any value unless there was high-grade ore to start on in a formation of that kind.

Q. You would not consider they were of any value? A. No, sir.

Q. Did you ever hear of Professor Waldemar Lundgren of the United States Geological Survey?

A. Yes, sir.

Q. He is also a professor of the Massachusetts Institute of Technology? A. I believe I have.

Q. He is a pretty big man in the mining and geological world, isn't he?

A. I could not say, he may be.

Q. That is his reputation; you as a mining man know that he has high standing, do you not?

A. I could not say, I think I have heard of the man; he may be a very competent man; I could not say whether he is or is not.

Q. The fact that he was head of the United States Geological Survey would indicate that he was a man of considerable standing and ability, would it not?

(Testimony of W. T. Moran.)

A. I would think he would have to be.

Q. Would you be inclined to change your opinion with reference to these claims if you found what he says regarding the Coeur d'Alene Mines, to which I have referred, was favorable?

A. No, I would not consider it had any bearing whatever on these claims.

Q. You would not think so? A. No, sir.

Q. What reason then do you give for declaring these mining claims not valuable, if not that the formation is quartzite, and that the only indications of lodes of values are in the fractures or shear planes?

A. Well, as I said before, in such formations unless I had high-grade ore to start on, I would not invest a cent trying to develop them.

Q. If Professor Lundgren should say, also, that in this Bunker [138] Hill Mine the ore in large part is formed by replacement along tight shear zones in the quartzite, would that change your opinion regarding the value of this property?

A. No, sir, not a bit.

Q. You say that the conditions here are not such as to warrant developing it as a mine, although in other quartzite formations the conditions may be such as to warrant development, is that it?

A. Yes, sir, they may.

Q. Why are the conditions here such as to not warrant the belief that claims may not develop into paying mines?

A. Well, I have never sampled or assayed any of

(Testimony of W. T. Moran.)

the material, but from my observation it is what a miner would term pretty hungry looking material; if I had it assayed and it was high-grade ore in a formation of that kind, I would develop it, certainly.

Q. Mr. Moran, you would not want this jury to understand that you could tell whether or not material in a fracture carries values simply by the appearance of it, would you?

A. Well, not altogether, no.

Q. No man, however much study he has put upon the subject, can look at vein material, unless the mineral is of a certain character, and tell whether or not it carries values, is not that true?

A. I would not pass an absolute opinion on it, unless I did have it assayed; that is, if I discovered a deposit of ore, I would not turn it down until I determined the value of it.

Q. You would not want to pass an absolute opinion as to the values of these mining claims, because you haven't made assays?

A. Well, I would state from my observation.

Q. Just simply from your observation?

A. Yes.

Q. And the opinion you formed from your observation might be changed if it should develop there are any values contained in any of these fractures?

A. No, I would not say, "any values"; [139] you can get values out of most any country rock, you can get them out of granite.

Q. How about a dollar or two dollars?

(Testimony of W. T. Moran.)

A. I would not consider that worth developing at all.

Q. You don't know of very many mines that pay from the grass roots, do you? A. Oh, yes.

Q. All mines don't pay from the grass roots by any means, do they? A. They have done it.

Q. Very frequently an assay at the surface of fifty cents or a dollar or a dollar and a half, or thereabouts, will lead to big values underneath, isn't that true?

A. Well, of course that might be the case in a new district, that there has been no work done in; I should think that would have a great deal to do with it.

Q. Well if in the district in which these claims are situated, it appears that many thousands or even hundreds of thousands of dollars worth of ore has been extracted, that might lead you to believe that these particular claims are of value, might it not?

A. I didn't examine any farther than three claims; I don't know what ores have been extracted.

Q. Well, if it should appear that on adjoining claims very much ore has been extracted, would you then change your opinion regarding the merits of these three claims?

Mr. THATCHER.—Object to it, if the Court please; what may appear on other claims is no criterion of what there is on this ground.

Mr. SPRINGMEYER.—I am merely going to his opinion.

The COURT.—I will allow these questions as test-

(Testimony of W. T. Moran.)

ing his opinion, but it cannot change the fact as it exists on the ground.

Mr. THATCHER.—If it is only for the purpose of testing his opinion, I have no objection, of course, and I withdrew the objection; [140] if it is for the purpose of showing this is valuable ground by reason of the fact the other is valuable, I object.

The COURT.—You may raise the point again.

(By direction the reporter reads the question.)

A. No, I don't believe I would.

Mr. SPRINGMEYER.—(Q.) You said a while ago that it might be dependent on the value of adjoining claims; why do you say under these conditions you would not do so.

A. The value of these claims?

Q. The value of claims in the district, you put it.

A. As I said, the development of the district might prove as a guide.

Q. If the claims I referred to adjoin these three claims, they are in the same district of course, and the nearer they are the more likely they would be to serve as a guide for these three claims, is not that true?

A. May and may not; I have seen valuable mines, and the adjoining claims are practically worthless for mining purposes.

Q. If it were a fact that in 1912 shipments of ore were made from claims adjoining the Evening Star and Salt Lake No. 3, would that change your opinion? A. No, sir, it would not.

Q. Mr. Moran, do you believe that the size of the

(Testimony of W. T. Moran.)

vein is the controlling factor in its value? A. No.

Q. You think if the fracture, or seam or shear zone is very small, it might still be a likely mine, do you?

A. If the ore was very valuable.

Q. In fact, that is the case at Cripple Creek, isn't it, in very many of the mines?

A. No, that is not very valuable ore.

Q. The fractures and shear zones there are very narrow indeed, are they not?

A. I understand there is a good many veins there.

Q. Well, you understand that there are a good many veins there [141] that have developed from small fractures on the surface, do you not?

A. Oh, I could not say as to that; I never made any study of the district, and I have never been in the district.

Q. Well, suppose this authority to whom I referred, Professor Lundgren, should say with regard to Cripple Creek, that most of the veins there are in closely sheeted zones, would that change your opinion as to the value of these particular claims?

Mr. THATCHER.—I object, if the Court please, upon the ground it has not been shown in any way that the formation and character of the rock in Cripple Creek is quartzite, sandstone, or even similar in any way to the character and formation in the Copper Canyon, and in no way bears upon it.

Mr. SPRINGMEYER.—May it please the Court, just now we are addressing ourselves to the question of shear zones and fractures. As I understand his testimony on direct examination, he said because

(Testimony of W. T. Moran.)

they were fractures and shear zones, they were not favorable for the deposition of minerals; now I am asking him if it should appear that in other mines, particularly the rich Cripple Creek mines, there are fractures and shear zones, which have led to great values, and to large ore deposits, whether that would change his opinion; I think the question certainly is proper in that regard.

Mr. THATCHER.—I think counsel has not accurately stated Mr. Moran's testimony; Mr. Moran has made the distinction between igneous and sedimentary rock, and he said where there are shear zones in the quartzite, that it would be unfavorable to ore; that mere shear zones in the quartzite would not indicate ore. I think that is his statement.

The COURT.—Well, I will allow you to ask the question, but the witness will not be required to confine himself to a categorical answer; he can answer that just as his judgment dictates, provided it is an answer to the question. [142]

A. It would not change my opinion at all.

Mr. SPRINGMEYER.—(Q.) Then do I understand you to say that a matter of fractures, or the size of the fractures or shear zones is not important?

A. Not altogether, no; the value of the ore has a great deal to do with it.

Q. A while ago you said with reference to the Coeur d'Alene mines, the mere fact that it was quartzite was not controlling.

A. Controlling to what?

Q. Wasn't controlling as a guide to you in form-

(Testimony of W. T. Moran.)

Q. Wasn't controlling as a guide to you in forming your judgment as to whether claims might be of value.

Mr. THATCHER.—I don't think he ever testified to anything of that kind, if the Court please. Counsel is getting mixed up with his theory about the Coeur d'Alenes and the answers of this witness. The witness was asked if they had discovered ore in the quartzite in the Coeur d'Alenes, would that change his opinion about these claims, and he said no. The question asked here is not a direct or fair statement of what has been said by the witness. There is no such testimony as that by this witness.

The COURT.—Well, he can answer that to suit himself.

Mr. SPRINGMEYER.—Let me withdraw the question; I don't want to be unfair to the witness; I simply want to get his ideas regarding this thing.

Q. Is it a fact that because this formation is quartzite, it is not necessarily against the mineral value of the claims?

A. It is unfavorable for it, the ore formation.

Q. It is unfavorable, but it is not necessarily detrimental to the character of the property as a working mine, is it; it is merely an unfavorable indication?

A. Well, I would give it as my opinion that it is very unfavorable, and especially where you don't have rich ore at the surface to develop your mine from. [143]

Q. Well, it comes to this, Mr. Moran, that the controlling factor with you is whether there is rich ore on the surface, isn't it?

(Testimony of W. T. Moran.)

A. That is one of the factors.

Q. That is one of the controlling factors with you?

A. Yes.

Q. And you said a while ago if there were some values at the surface, it might pay to work it as a mine, didn't you? A. Some values?

Q. Yes. A. I didn't say some values.

Q. Is it a fact if there were some values at the surface, it might pay to work it as a mine?

A. I said there are some values in every mine; I would not say some values; if there was any high grade ore, or ore that was profitable, I would spend money to develop it.

Q. As you said a while ago, very many mines do not pay for the grass roots, as the miner says?

A. No, they don't extract commercial ore from the grass roots.

Q. Quartzite is a very hard rock, isn't it, Mr. Moran? A. Well, it is, yes.

Q. Did you make any tests to determine whether it was quartzite, in the way of scratching the rock with your knife?

A. Oh, I have handled the rock a great deal.

Q. I mean this particular rock on these claims.

A. Yes.

Q. You did test it? A. Yes, sir.

Q. Of course if it was quartzite it would not scratch with your knife, would it?

A. Well, it is very fine grain, part of it; if it was compact, it probably would not, but quartzite is sim-

(Testimony of W. T. Moran.)

ply cemented sandstone, and it is very likely to break up.

Q. Did this particular rock that you subjected to the scratch test with your knife, scratch or not?

A. Well, I could not say that I made a very close test of it.

Q. Well, you certainly remember, Mr. Moran, when you determined [144] whether it was quartzite or not, whether you could scratch it with your knife, don't you?

A. Well, there is evidence of a scratching on it, because quartzite is a rock that is made up of small particles of quartz and sand, and particles of cement, and scratching it with a knife is not really a good test.

Q. You want this jury to understand that this rock which you say was quartzite, you could scratch with your knife, and you did scratch with your knife in making a test? A. It is just as I stated.

Q. I want to know exactly; answer yes or no.

A. Yes; the rock as a whole is very easily scratched.

Q. Will you please answer my question: Did you scratch this rock which you tell the jury is quartzite, with your knife? A. Certainly.

Q. Don't you know, Mr. Moran, that the hardness of a tempered knife or steel is only about five in the mineralogist's scale of hardness, and that the hardness of quartzite is seven in the same scale?

A. Well, that is quartz proper, it is not quartzite; quartzite is a mixture, it is a cemented rock.

(Testimony of W. T. Moran.)

Q. What is it cemented of?

A. Oh, particles of sand.

Q. Particles of silica, isn't it?

A. It is largely silica.

Q. Cemented with deposited silica, is not that the fact?

A. It is largely silica; there are some other cementing materials.

Q. Just give me your definition of quartzite, please.

A. Well, I would say quartzite was a cemented sandstone.

Q. What are the chemical constituents of quartzite?

A. Oh, it is composed principally of small particles of silica—

Q. (Intg.) No, I mean quartzite. [145]

A. Well, that is what I am telling you—quartzite; it consists of small particles of silica, it is cemented with sand; the sand may be as hard as the particles of silica, and may not be—may not be near as hard.

Q. Well, if it is all silica, then none of it can be any softer than quartz, can it?

A. It may not be all silica; there is different—

Q. (Intg.) Didn't you answer yes to my question that quartzite was silica, crystalized silica cemented with deposited quartz; is not that what quartzite is?

A. No, I said it was cemented with deposited sand.

Q. There isn't anything in quartzite but silica, is there? A. Yes, there is.

(Testimony of W. T. Moran.)

Q. What else?

A. Some varieties of quartzite carry a very high percentage of silica; there is different impurities, such as you find in all the sand, or even clay; there are a number of different varieties.

Q. Did you ever hear of Mr. Person, author of a work on rocks and minerals?

A. I don't know as I have.

Q. Haven't heard of him. Isn't his work on rocks and minerals a common handbook for miners and mining men? A. I have never seen it.

Q. Geologist in the United States Geological Survey, and professor of geology at the University of Yale. Now this is his definition for quartzite: It may accurately be described as an altered sandstone in which the grains of quartz sand are united by a cement composed of the same material, that is, deposited quartz.

A. These different authors give different definitions; I would not accept that as—

Q. (Intg.) Can you think of an authority, or of any author on [146] geology or mineralogy who says that quartzite consists of any mineral whatever outside of silica in different forms?

A. I can't think of them right now, but I believe I could look up some of these authorities, and find it.

Q. And you say that quartzite may scratch by the knife, although quartz may not?

A. Yes; the particles of silica themselves would not be scratched; you could not scratch silica with a knife; if you can imagine a large crystal of the silica

(Testimony of W. T. Moran.)

and try to scratch it with a knife, you certainly would not be able to do it.

Q. To leave that: In the seventy-five foot tunnel on the Midas you said there was a fracture or shear zone sixteen or eighteen inches wide, didn't you?

A. Yes, sir.

Q. You said that the material in that was quartzite ground up, and different in appearance from the rest of the quartzite; wasn't that what you said?

A. I believe it was something on that order; I don't know that I used the exact words.

Q. And yet you say even though it was in that fracture, and was different in appearance from the surrounding quartzite, that it is not vein material?

A. Well, it is pretty well oxidized; I would not say absolutely that it is a quartzite, but it is my opinion that it is highly oxidized; and in altered rocks of that kind it is very difficult, even for a highly trained geologist, to tell exactly whether it is or is not.

Q. You don't mean to say that quartzite can oxidize, do you? A. No, quartzite itself would not.

Q. It is an oxide itself, so it could not oxidize.

A. In fractures of that kind there is more or less water action; sometimes you will find mud mixed up with it, find even ordinary mud.

Q. And that is just the condition when any ore is deposited, isn't it, when there is water action in these fractures? [147] A. Not necessarily.

Q. Well, that is a favorable condition, though, isn't it? A. Finding water?

(Testimony of W. T. Moran.)

Q. Yes. A. No, I would not say that it is.

Q. Well, Professor Speer, of the United States Geological Survey, says mineralizing waters follow along fractures in all their deviations; along their course they often deposit ore, both in the fractures and in the rock, by gravity filling, replacement of interstitial filling, that is, by impregnation; shear zones are very favortble for ore deposit; if that condition exists with reference to this fracture sixteen to eighteen inches in width, would you not change your opinion, and say that might develop into a paying mine?

A. If there were mineralizing waters in there they might deposit mineral, but all waters are not mineralizing.

Q. From your examination of this could you determine whether or not any mineralizing waters had passed along the fracture?

A. Well, it is pretty hard to determine; it is right on the surface, it is badly broken up.

Q. You didn't make a very careful, close examination of it, as a matter of fact?

A. As I stated before that I didn't.

Q. Only a surface examination, quickly and hurriedly done; that was what you did, Mr. Moran, wasn't it?

A. I made a fairly close examination; I didn't make a technical geological examination of it; I made about the same character of examination that most mining engineers would make.

Q. Suppose, Mr. Moran, that a sample of this

(Testimony of W. T. Moran.)

ground-up material in this shear zone sixteen or eighteen inches wide was shown to assay $11.50 in gold, silver and copper, would you then change your opinion as to the value of that property?

A. I would call that a pretty fair assay. [148]

Q. You would then say that that probably would develop into a mine, at least that it was worth locating and working, would you not?

A. If I got an assay of that value; of course if I picked out a piece of rock, possibly as big as your thumb, and got an assay of that kind, I would not consider it a fair assay, or a fair sample; if I took a sample across eighteen inches of material, and it assayed ten or eleven dollars, I would probably develop a little further.

Q. Of course there are barren spots in all veins and all fractures, are there not?

A. Well, an eighteen-inch vein is a very small vein to segregate the barren spots from the rich spots.

Q. If a man wants to take an assay of a vein, and is careful about it, he may be able to get a blank in the same vein where another person who desires to get values can get a considerable showing; is not that true?

A. Well, he may know where there is a little rich streak in a place where he could get a rich sample.

Q. Now with reference to the Evening Star; I believe it was at point 20 you said the quartzite there was stained with brown, didn't you, brown iron stain?

A. I am not certain, possibly I did; I think that

(Testimony of W. T. Moran.)

is the condition there.

Q. I have in my notes that you said in your direct examination that at point 20 in the Evening Star cut that the quartzite was quite heavily stained brown with iron.

A. I believe that is the condition there, yes, sir.

Q. Now is all the quartzite in the country rock thereabouts stained with iron?

A. Not all of it, no.

Q. Well, isn't it a fact that it is heavily stained right at this particular place only?

A. You mean on the Evening Star Lode? [149]

Q. Right at this particular point, point number 20 according to your map.

A. The Evening Star lode is pretty well covered with an earth fill; I believe that is the only point on the Evening Star where there is any brown material.

Q. If there is a heavy iron stain there it indicates that mineral solutions passed along this particular part; which may be designated a fracture, and which we may claim to be a vein; is not that true?

A. A mineral solution?

Q. Yes, if there is a heavy brown iron stain there, is not that evidence that there was a mineralizing solution passed in there?

A. No, it looks as though there might have been some water there. But I would not say necessarily it is a mineralizing solution.

Q. Well, on the point designated "24," Evening Star, you said the material there showed an altered sandstone, didn't you? A. Yes, sir.

(Testimony of W. T. Moran.)

Q. Well then, am I to understand that there is a sandstone strata on the Evening Star claim?

A. Well, that is not strata; when I refer to sandstone, I refer to practically the same thing as quartzite; the quartzite, as I said before, in my opinion is simply cemented sandstone.

Q. Then as I understand it, there is a stratum of sandstone associated with the quartzite at this point, is not that right? A. No, I would not say that.

Q. Then how do you explain your statement that there was sandstone?

A. This is the only exposure on the claim south of this cut 20, it is really a mixed-up material; some of it is so highly altered you can't hardly tell what it is; I had a sample of about the same material as magnesia, which you buy at the drugstore, some of it was a little harder.

Q. But you do say there was a stratum of sandstone? A. No. [150]

Q. Where did the sandstone come from, Mr. Moran? A. Where did it come from?

Q. Yes, in your opinion, from your examination.

A. Well, as I stated before, the sandstone,—I merely referred to it as a sandstone as associating it with quartzite; it is broken up, and it is not cemented, it is a sort of a—you may say it is pulverized, it is very fine.

Q. There is a material difference, however, between sandstone and quartzite, isn't there, a physical difference? A. There is a physical difference.

Q. That is to say quartzite is an altered sandstone,

(Testimony of W. T. Moran.)

vastly harder? A. It is a cemented sandstone.

Q. And vastly harder? A. It is cemented.

Q. You don't mean to say then that this sandstone at this particular point has any meaning at all from a mining standpoint to determine the value of the property as a mine, or otherwise?

A. It would have about the same significance as quartzite; in fact, they are so closely associated that there is very little difference.

Q. Well, will you please tell the jury then how you can get sandstone between two bodies of quartzite? A. Between two bodies of quartzite?

Q. Yes.

A. Well, as I said before, this is the only exposure made on the Evening Star south of cut number 20, no other exposures in that neighborhood.

Q. Isn't it an absurdity to say you can get sandstone between two bodies of quartzite, when quartzite itself is an altered form of the sandstone; wouldn't it mean necessarily that the entire body of rock would be changed into a quartzite; just the same proposition, isn't it, as if you would try to bake something on each side, and in the center have something not baked? [151]

A. I don't know what you mean by finding sandstone between two masses of quartzite.

Q. You said there is sandstone between, I want to know about that.

A. Where are the two bodies of quartzite?

Q. Aren't there bodies of quartzite on all sides of the sandstone?

(Testimony of W. T. Moran.)

A. You mean on the Evening Star lode?

Q. At this particular point 24; at which you testified there was an exposure of sandstone.

A. I said it was an altered sandstone; you might say that quartzite is an altered sandstone; it is not exactly altered, but it is cemented, it is altered physically.

Q. You don't want to give any opinion as to how this sandstone came to exist there with the quartzite, do you?

A. I would say they are one and the same thing, if I was to give my opinion; it is very difficult, in fact, to determine at that particular point; the rock is so highly altered I don't believe an expert geologist could state absolutely the character of the rock, that is, on picking up a piece of rock and looking at it.

Q. You don't claim you made an expert geological or petrological examination of this rock you state was altered sandstone, do you?

A. No, sir, I have stated that several times.

Q. I want to know thoroughly, because you are so certain it is altered sandstone, and I want to be satisfied that that is your opinion. Now there is an open cut on Salt Lake No. 3, which you designate as number one on your map; did you say in that open cut you saw no evidence of a vein or lode?

A. In number one?

Q. No, in number two? A. In cut number two?

Q. Yes.

A. Why, there is an exposure in there; I would

(Testimony of W. T. Moran.)

call it more of a slip, I think, than I would a lode. [152]

Q. A slip?

Mr. THATCHER.—Where is that?

Mr. SPRINGMEYER.—Point number two on the Salt Lake No. 3.

Mr. THATCHER.—I object to that on the ground it is not proper cross-examination; no questions were asked of him with reference to that cut—neither one nor two, no questions were asked.

The COURT.—You evidently have that confused.

Mr. SPRINGMEYER.—(Q.) Didn't you say there were no lodes or veins on Salt Lake No. 3?

A. I am not positive as to that.

Mr. THATCHER.—No lodes on the ground, yes; but no examination was made of the surface about cut number two.

Mr. SPRINGMEYER.—(Q.) Didn't you testify that you made an examination at that point?

WITNESS.—I don't recall it.

Mr. THATCHER.—I know that he did not; I didn't ask that question, about point two or point one.

Mr. SPRINGMEYER.—(Q.) Didn't he say there was a wash at point number two?

Mr. THATCHER.—He did not; I didn't ask.

WITNESS.—I am fairly certain that I didn't make that statement.

Mr. SPRINGMEYER.—(Q.) You did say, Mr. Moran, that there were no lodes or veins on Salt Lake No. 3, didn't you?

(Testimony of W. T. Moran.)

A. I am not certain as to just how I stated it.

Q. Well, what is the fact from your examination? I want to cross-examine only within the limits of what you stated on direct examination, but I certainly have in my notes that you stated that.

A. That there are no veins or lodes on Salt Lake No. 3?

Q. Yes. A. I don't believe there is. [153]

Q. But you do say that there is a slip at the point marked point number 2 on your map?

A. That would be shaft number 1, I am confused in the numbers; I designated it as a shaft; it is right next to the road leading to the mill, at this point here (indicating on map).

The COURT.—What is the number of that point?

Mr. THATCHER.—Number one.

Mr. SPRINGMEYER.—(Q.) You say there is a slip there?

A. There is a slip or fracture.

Q. Would you say there was nothing whatever at point number two? A. Number two?

Q. Yes.

A. There is a break in the formation, I would not call it a ledge.

Q. I understand then that at point number one there is what you term a slip in the formation, and at point number two what you term a break in the formation?

A. It is a break in that country rock, a fracture.

Q. A break in the country rock?

A. It is a surface cut; it is kind of hard to desig-

(Testimony of W. T. Moran.)

nate it as a lode, it is practically on the surface.

Q. Well, it is six or seven feet deep there, isn't it?

A. Yes, six or seven feet deep, easily, that is the total cut, I am not sure but what that consists of some wash.

Q. Well, you don't mean to say you could have a break or slip in the wash, do you, Mr. Moran?

A. No, I do not.

Q. And that must be in the solid formation, must it not, if there is a break? A. Yes, sir.

Q. Also at point number one, where there is a slip, it must be solid formation, must it not?

A. That is solid formation at number one.

Q. Might ore sometimes be deposited in what is termed by you a [154] break in the solid formation? A. Yes, sir.

Q. If it were to develop that this break in the solid formation at point number two were to carry values of $5.80, $9.60 and $$11.30 per ton, in three different samples, would you conclude that possibly the Salt Lake No. 3 might be workable as a lode mining claim?

A. I think if I got assays of that value, I would develop the ground; I would develop it to determine the extent of that ore.

Q. Then so far as the formation at point number two on Salt Lake No. 3 is concerned, you don't want the jury to understand that it is unfavorable for the formation of ore, do you?

A. Well, I took no samples or made no assays from there; I could not pass an opinion on that.

Q. Well, without taking samples and making

(Testimony of W. T. Moran.)

assays, how can you say that there are no veins or lodes, Mr. Moran? A. No veins or lodes?

Q. Yes, you said on direct examination that there were no veins or lodes on Salt Lake No. 3.

A. I would not say there are veins or lodes on Salt Lake No. 3; there is what I would call a fracture at improvement number one, on the shaft right next to the road; it may be termed a vein, I generally refer to it as a fracture.

Q. But until you make assays of all the fractures, breaks and slips, you are not prepared to say that there are no veins or lodes that might develop into pay ore, are you?

A. No, if I got a reasonably good assay, for instance in shaft number one, I would probably call that a lode or ledge; if I got an assay of fifty cents, or something of that kind, possibly better, I would not say so.

Q. If you got values of $5.80, $9.60 and $11.30, in three different samples in cut number two, you would say it might be worth [155] while to develop it as a mine, wouldn't you? A. Yes.

Q. You would say at least that it could be located as a mining claim, wouldn't you? A. Yes, sir.

Q. Now did you see any igneous rocks anywhere in the vicinity of these three claims, or on them?

A. No, sir, I did not.

Q. You did not? A. No, sir.

Q. Are you prepared to say there are no igneous rocks anywhere on these three claims?

A. There may be in some extreme corner, or very

(Testimony of W. T. Moran.)

close to one of the outside boundaries, but I don't believe there is; I went over the claims pretty thoroughly, all over the ground.

Q. The wash that you testified to as being upon these claims, is rock and debris, I suppose?

A. It is part gravel.

Q. Is it cemented gravel, or is it loose rock and debris? A. It is loose.

Q. Not cemented gravel?

A. No, sir; here may be a little cemented gravel, but most of the material that I examined was loose gravel.

Q. Now right down in the gulch proper then, the material is gravel, isn't it? A. Yes, sir.

Q. On the sidehill is the material of a different nature?

A. Why, there are no shafts of any depth on the sidehill, I don't believe, that would reach gravel, they are all in a surface wash.

Q. Then you don't mean to have the jury understand that there is any wash on the sidehill do you?

A. There is wash, yes.

Q. On the sidehill?

A. It is an earth, it is an earth fill; all the shafts are quite shallow, they are not of sufficient depth to open up gravel.

Q. Well, the open cuts go into solid formation, you said, number one and number two?

A. It is solid formation where the open [156] cuts are.

Q. Isn't it a fact, Mr. Moran, that practically the

(Testimony of W. T. Moran.)

whole of these claims to the east of the pencil as I use it, are on the sidehill, all this part (indicating on map)?

The COURT.—If you want that in the record, Mr. Springmeyer, you had better draw a line there so there will be something definite to refer to later. You can pursue your own method, however, perhaps you don't regard that as important.

Mr. SPRINGMEYER.—(Q.) Isn't it a fact that all of the three claims in question to the east of the wagon road marked on your map, are on the sidehill?

A. East of the wagon road?

Q. Yes, A. No, it is not.

Q. In this direction (indicating on map)?

A. No, sir.

Q. Where does the road run?

A. It runs practically down the gulch; the gulch is quite wide in different places.

Q. Well, the wagon road, you say, runs right down the gulch, that is true, isn't it?

A. It is in the gulch, the gulch is quite wide there at different points.

Q. And on each side of the wagon road the hills rise up, do they not?

A. You would not say from the wagon road; in some points it is probable, but it may be a hundred feet east of the wagon road to the bottom of the gulch before there is any rise; in fact, at some points along there the ground is lower east of the wagon road than it is on the wagon road or in the gulch.

Q. Mr. Moran, do you recognize that? (Hands

(Testimony of W. T. Moran.)

photograph to witness.) A. Yes, sir.

Q. Do you think that is a correct representation of part of the Salt Lake No. 3 claim? A. Yes, sir.

Mr. SPRINGMEYER.—I offer that in evidence.

Mr. THATCHER.—When was this taken?

Mr. RALPH.—About the 13th of this month. [157]

Mr. THATCHER.—No objection.

(The photograph is admitted in evidence and marked Defendant's Exhibit No. 1.)

Mr. THATCHER.—I suppose that is introduced for the purpose of showing the general topography of the country, only; is that right?

Mr. SPRINGMEYER.—Yes, that is the only purpose of it.

Q. Do you recognize that photograph? (Hands to witness.) A. Yes, sir.

Q. Does that fairly represent the condition of the gulch and sidehill on the Salt Lake No. 3?

A. Yes, sir.

Mr. SPRINGMEYER.—We will offer that in evidence. Any typewritten statments on the photographs, of course are not to be considered.

Mr. THATCHER.—No objection.

(The photograph is admitted in evidence and marked Defendant's Exhibit No. 2.)

Mr. SPRINGMEYER.—(Q.) Do you recognize that photograph? (Hands to witness.)

A. Yes, sir.

Q. Does that fairly represent the conditions in the gulch on the Salt Lake No. 3 and the sidehill?

(Testimony of W. T. Moran.)

A. It does.

Q. So far as covered by the photograph?

A. It does; it covers a portion of the ground that is occupied by the Salt Lake No. 3.

Mr. SPRINGMEYER.—I offer that in evidence.

Mr. THATCHER.—That was taken when?

Mr. RALPH.—Either the 12th, 13th or 14th, it was in the middle of this month.

Mr. THATCHER.—I understand that counsel does not contend that this represents the condition of the ground at the time the locations were made, but merely that it represents the condition [158] of the ground as it existed on the 13th day of May, 1915.

Mr. SPRINGMEYER.—Certainly, we don't contend that it represents the condition at any other time.

Mr. THATCHER.—No objection then.

Mr. SPRINGMEYER.—I want to say the point of it is this; the witness has testified in a certain manner regarding the wash in the gulch and on the sidehill, and these photographs go right to that point.

The COURT.—That is all this is admitted for then, at the present time. As to the position of the workings on the ground it is of no force.

Mr. SPRINGMEYER.—Not at all.

The COURT.—And this picture is not to be considered as evidence of anything except the general topography of the country, the appearance of the country, and the location of the road with relation to the hills, that is all?

(Testimony of W. T. Moran.)

Mr. SPRINGMEYER.—That is all.

(The photograph is admitted in evidence and marked Defendant's Exhibit No. 3.)

Q. Mr. Moran, in the gulch there are quite a number of large boulders, are there not?

A. There are some boulders in there, I don't think there is any of any great dimensions.

Q. There are some, though; did you notice them?

A. I didn't notice any particularly large ones; there is probably some boulders there.

Q. The hills in this vicinity, comprising parts of these claims, are typical of Nevada hills, are they not? A. Yes, sir, they must be.

Q. They are not unusual in the state of Nevada by any means? A. No, they are not. [159]

Q. Like the general run of Nevada hills. Now you say you took about two days to make your surveys and mining examination of these claims.

A. About two days and a half.

Q. Did you remain there the whole of the third day? A. No, I left in the afternoon.

Q. During that time you made these surveys of the five claims, that is, the three lode claims and the two placer claims, and you made the mining examinations, to which you have testified, did you not?

A. Yes, sir.

Mr. SPRINGMEYER.—That is all.

Mr. FORMAN.—That is all.

(RECESS FOR TEN MINUTES. AFTER RECESS.) [160]

**Testimony of Emmett D. Boyle, for Plaintiffs.**

Mr. EMMETT D. BOYLE called as a witness on behalf of plaintiffs, after being sworn, testified as follows:

Direct Examination by Mr. THATCHER.

Q. Your full name is Emmett D. Boyle?

A. Yes, sir.

Q. You are a mining engineer? A. I am.

Q. How long have you been a mining engineer?

A. For sixteen years.

Q. Where have you followed your profession?

A. In British Columbia, Idaho, Nevada, Mexico and California.

Q. Have you had charge of properties?

A. I have.

Q. Will you tell us what properties you have had charge of?

A. I was in charge of the underground workings of the Esperanza Mine in El Oro, Mexico in 1901; I was in charge of the North Rapidan properties at Como, Nevada, for five and a half years, following 1902; I was in charge of properties in Virgina City and in Silver City, Nevada.

Q. You are also a surveyor, Mr. Boyle?

A. Yes, sir.

Q. And you were a United States Deputy Mineral Surveyor during 1913 and 1914? A. Yes, sir.

Q. You were a witness in the former trial of this case, were you not? A. I was.

Q. At that time it was the Glasgow-Western ver-

(Testimony of Emmett D. Boyle.)

sus Guy Davis and others?

A. I don't recall the title of the case, but I was a witness in the case that involved the title to this mining property.

Q. That was in December, 1913?

A. It was in the fall or early winter of 1913, I don't recall the exact dates.

Q. Prior to the trial of the case did you make an examination of the ground? A. I did. [161]

Q. Are you familiar with the ground embraced within the Guy Davis placer and Salt Lake No. 3?

A. With portions of it.

Q. Are you familiar with the ground embraced within the Midas, and the conflict between it and the Homestake placer? A. With portions of that also.

Q. And the same is true with reference to the Evening Star, and the other portions of the Homestake placer conflicts with it? A. Yes.

Q. You have made no further or subsequent examinations since about two years ago, or a year and a half ago?

A. The only examination which I ever made of the property was made in November, I believe, of 1913, when I spent about two days on the ground.

Q. Do you remember the various cuts and workings on these three claims, and the placer claims?

A. I have a fairly distinct recollection of certain cuts on the ground which I examined, yes, sir.

Q. With reference to the Salt Lake No. 3—Guy Davis placer, I call your attention to the discovery monument on what is marked as the point of dis-

(Testimony of Emmett D. Boyle.)

covery, "Discovery Monument Salt Lake No. 3" on this map, Exhibit "A"; do you remember that point?

A. No, I have no recollection of the point of discovery.

Q. Do you recollect anything with reference to the character of the formation?

A. Let me see that map a little closer, please. (Witness goes to map.) Have you the map that was in evidence at the former trial?

Q. I think we have. (The map used at the former trial is produced by the clerk.)

Mr. THATCHER.—Might I withdraw the witness temporarily, and let him go over the other map, so that he may have an opportunity to refresh his recollection?

Mr. ELLIS.—Certainly. [162]

**Testimony of Ed Malley, in His Own Behalf.**

Mr. ED. MALLEY, one of the plaintiffs, called as a witness, testified as follows:

Mr. THATCHER.—(Q.) What is your name?

A. Ed Malley.

Q. Where were you born, Mr. Malley?

A. In Schuylkill County, Pennsylvania.

Q. Are you a citizen of the United States?

A. I am.

Mr. THATCHER.—That is all.

Mr. SPRINGMEYER.—(Q.) You are the State Treasurer of Nevada, are you not?

A. Lately, yes.

Mr. SPRINGMEYER.—That is all.

**Testimony of George A. Cole, in His Own Behalf.**

Mr. GEORGE A. COLE, one of the plaintiffs, called as a witness, testified as follows:

Mr. THATCHER.—(Q.) What is your name?

A. George A. Cole.

Q. Where were you born, Mr. Cole?

A. I was born in Renfrew County, Ontario, Canada.

Q. Are you a citizen of the United States?

A. I am.

Q. Have you your last papers? A. I have.

Q. Have you them with you?

A. I have; both the last papers, and a copy of the first.

Q. Since coming to the United States, have you lived here continuously? A. I have.

Q. And you are a citizen of the State of Nevada?

A. I am.

Mr. THATCHER.—We offer this in evidence, and will ask to substitute copies.

Mr. SPRINGMEYER.—(Q.) You are the State Controller of Nevada, are you not? A. I am.

Mr. SPRINGMEYER.—That is all.

(The Certificate of Naturalization is admitted in evidence, marked Plaintiffs' Exhibit "I," and reads as follows:) [163]

**Plaintiffs' Exhibit "I"—Certificate of Naturalization of Geo. A. Cole.**

(CERTIFICATE OF NATURALIZATION.)
UNITED STATES OF AMERICA.

*Circuit Court of the United States, District of Minnesota, Fourth Division.*

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME: GREETING.

KNOW YE, That, at the City of Minneapolis, in the District aforesaid, on the 12th day of November, A. D. 1904, one GEORGE A. COLE, a native of Canada applied to said Court to be admitted to become a Citizen of the United States, and having to the satisfaction of the Court produced such proofs, made such renunciations and abjurations and taken such oaths as are required by the laws of the United States relating to the admission of aliens to become citizens of the United States, and all the affidavits required in such case by the Act of Congress entitled "An Act to regulate the immigration of Aliens into the United States," approved March 3, 1903, having been duly made and recorded, the said GEORGE A. COLE was by said Court duly admitted to become and he is accordingly a

CITIZEN OF THE UNITED STATES OF AMERICA.

IN TESTIMONY WHEREOF I have hereunto set my official signature as the Clerk of the Court aforesaid, and affixed the seal of said Court, at the said City of Minneapolis, this 12th day of November,

A. D. 1904, and in the 129 year of the Independence of the United States of America.

[Seal] HENRY D. LANG,
Clerk.

By Margaret C. Noonan,
Deputy. [164]

*District Court, Fourth Judicial District.*

State of Minnesota,
County of Hennepin,—ss.

I, George A. Cole do hereby, upon my oath, declare that I first arrived in the United States on or about the 15th day of March in the year A. D. 1880, and that I have, ever since that time, continued to reside in the United States, and that it is *bona fide* my intention to become A CITIZEN OF THE UNITED STATES, and to renounce forever all allegiance and fidelity which I in anywise owe to any foreign Prince, Potentate, State or Sovereignty, and particularly all allegiance and fidelity which I owe to the Queen of Great Britain and Ireland, of whom I have heretofore been a subject.

GEORGE A. COLE.

Subscribed and sworn to before me this 29th day of Oct. A. D. 1894.

D. M. SARIBAER,
Deputy Clerk of said Court.

*District Court, Fourth Judicial District.*

State of Minnesota,
County of Hennepin,—ss.

I, C. N. Dickey, Clerk of the above named Court, do hereby certify that the foregoing is a true copy

of the original declaration of George A. Cole as the same appears of record and on file in the said Clerk's office, at the Court House, in said Hennepin County, Minnesota.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at the City of Minneapolis, in said County, this 7th day of Nov. A. D. 1904.

[Seal] C. N. DICKEY,
Clerk of the District Court.
By A. J. Switzer,
Deputy. [165]

**Testimony of D. S. Van Orman, for Plaintiffs (Recalled).**

Mr. D. S. VAN ORMAN, recalled as a witness, testified as follows:

Mr. THATCHER.—(Q.) Where were you born?

A. I was born in the State of Iowa.

Q. Are you a citizen of the United States?

A. Yes, sir.

Mr. THATCHER: That is all.

Mr. SPRINGMEYER: May I ask a question on cross-examination, just one question?

Mr. THATCHER.—Go ahead.

Mr. SPRINGMEYER.—(Q.) At the time you made the location of the placer claim, did you know that some one was living in the houses on Salt Lake No. 3 claim? A. I did.

Q. Do you know who it was, Mr. Van Orman?

A. I don't remember who it was; he was an occupant in one of the houses up there.

(Testimony of D. S. Van Orman.)

Q. Did you know that he was an employee or owner of the claim?

A. I knew that he was representing the adjoining claim.

Q. That is, he was an employee of the man who pretended to own the Salt Lake No. 3, the Midas and Evening Star?

A. He was the man that represented the Glasgow Western.

Q. And they at that time pretended to be the owners of Salt Lake No. 3, Midas and Evening Star, did they not?

A. I believe there was a presumption to that effect.

Mr. SPRINGMEYER.—That is all.

Mr. THATCHER.—That is all. [166]

**Testimony of John J. Healey, for Plaintiffs (Recalled).**

Mr. JOHN J. HEALEY, recalled as a witness, testified as follows:

Mr. THATCHER.—Where were you born?

A. New Haven, Connecticut.

Q. Are you a citizen of the United States?

A. Yes.

Q. And you were at the time these locations were made? A. Yes.

Q. You have continuously resided in the United States? A. Yes, sir.

Mr. SPRINGMEYER.—No questions.

**Testimony of Guy Davis, for Plaintiffs (Recalled).**

Mr. GUY DAVIS, recalled as a witness, testified as follows:

Mr. THATCHER.—(Q.) Where were you born?

A. I was born in Freeport, Illinois.

Q. Are you a citizen of the United States?

A. Yes, sir.

Q. Have you always lived in the United States?

A. Yes, sir.

Q. And you were a citizen at the time these claims were located? A. Yes, sir.

Mr. SPRINGMEYER.—No questions. [167]

**Testimony of William Forman, in His Own Behalf.**

Mr. WILLIAM FORMAN, one of the plaintiffs, called as a witness, testified as follows:

Mr. THATCHER.—(Q.) What is your name?

A. William Forman.

Q. Where were you born?

A. Born in Van Buren County, Iowa.

Q. Are you a citizen of the United States?

A. I am.

Q. Have you continuously resided in the United States? A. Yes.

Q. At all times since birth? A. Yes.

Q. And you were at all times a citizen of the United States? A. Yes.

Mr. THATCHER.—That is all.

Mr. SPRINGMEYER.—No questions.

**Testimony of George B. Thatcher, in His Own Behalf.**

Mr. GEORGE B. THATCHER, one of the plaintiffs, called as a witness, testified as follows:

Mr. FORMAN.—(Q.) Mr. Thatcher, where were you born? A. Aspen, Colorado.

Q. Are you a citizen of the United States?

A. Yes.

Q. Have you resided in the United States continuously since your birth? A. Yes, sir.

Mr. FORMAN.—That is all.

Mr. SPRINGMEYER.—No questions. [168]

**Testimony of Emmett D. Boyle, for Plaintiffs (Recalled).**

Mr. EMMETT D. BOYLE, resuming the witness-stand, testified as follows:

Mr. THATCHER.—(Q.) Do you remember anything with reference to this discovery monument, Mr. Boyle? A. No, sir.

Q. Did you go over generally the center or lode line of the Salt Lake No. 3—Guy Davis Placer?

A. I didn't follow the lode line, I traversed the surface; I recall going down this wagon road which runs from near the north end line of the claim, and passes out near the northwest corner of the Homestake placer.

Q. What examination did you make of that ground, of the Salt Lake No. 3 at that time?

A. I examined the outcrop, or the formation as exposed in the cut from the road—in the road which

(Testimony of Emmett D. Boyle.)

runs from the mill to the north end line.

Q. Did you make any examination under the mill?

A. I did. The mill is situated in a set of benches on the side hill, and I examined the exposure made in those openings.

Q. Will you tell the jury what the formation was, and what was found, and what you found there?

A. Well, I recall a fault crossing approximately at right angles to the lode line of the Salt Lake No. 3 claim, in the lower bench of the mill excavation.

Q. What was the character of that formation?

A. It was a crushed zone, consisting of quartzite somewhat kaolinized.

Q. Quartzite? A. Quartzite.

Q. Was it your opinion it was a lode?

A. I would call it a fracture zone—a fault.

Q. Did you take any assays from that?

A. I believe I did, yes, sir.

Q. To whom did you deliver those assays. [169]

A. They were delivered to Mr. Woodbury, the local assayer.

Q. And did you receive a certificate from those assays?

A. I did.

Q. And were they introduced in evidence at the last hearing of this case? A. Yes.

Q. Did you take any other assays from in and about that vicinity? A. No, sir, not that I recall.

Q. Where else did you make any examination upon any of this ground?

A. I examined a number of cuts on the Evening

(Testimony of Emmett D. Boyle.)

Star ground, and on the Yellow Jacket ground, as well as some of the placer openings on, I believe the Homestake Placer.

Q. Now on the Evening Star at that time, did you find the location monument that was on the ground?

A. I believe we did, although I am not positive on that point.

Q. Do you remember a cut easterly about seventy-five to one hundred feet of the discovery monument on the Evening Star?

A. I think that I did investigate such a cut; it was a cut about twenty-five feet long, or thereabouts, in a canyon.

Q. Do you remember what the character of the formation was?

A. Yes it was a crushed zone of country rock, slightly altered.

Q. What is the character of that country rock?

A. I take that country rock to be the Weber quartzite.

Q. Is that the same quartzite you find exposed up here in the excavation for the mill and the road?

A. As I recall it, it is, yes.

Q. Calling your attention to a cut on the south end of the Evening Star, which has been described as the white cut, do you remember that cut upon the ground? A. I do.

Q. By the way, with reference to cut number 20, did you take any assays from that?

A. I took several samples from it, but I [170]

(Testimony of Emmett D. Boyle.)

have not the record of those samples at the present time.

Q. Referring back to cut number 24, the white cut on the south end of the Evening Star, did you examine that?

A. I examined a cut on the south end of the Evening Star, which I presume to be the cut designated as number 24 on this map; that cut shows a crushed and altered country rock, but I was very much in doubt at the time whether or not the rock was in place, but was somewhat of the opinion that it was; there was no distinct evidence of strike or dip in that crushed zone.

Q. It was a crushed zone? A. Yes.

Q. What was the character of that rock?

A. I didn't make any careful petrographic determination of it, but I took it to be a crushed quartzite, somewhat kaolinized.

Q. Kaolinized, that is white colored?

A. Yes, those quartzites contain commercially in the neighborhood of fifteen per cent of aluminum, and they kaolinize under the action of pressure—thermal action.

Q. Kaolin is the effect of the clay on the quartzite?

A. Kaolin is a silicate of aluminum, which is one of the products of rock alteration and decomposition.

Q. Do you remember a tunnel on the Midas claim, which is marked here on the map number 22; it was south of the discovery monument?

A. I think that is the tunnel on the left hand side

(Testimony of Emmett D. Boyle.)

of a gulch running across the Midas claim, which I examined.

Q. Did you take any assays from cut number 24?

A. I did, yes.

Q. Coming back to cut number 22, what did you find there?

A. Cut 22 shows a selvage, or crossing of material there, which appeared to me to come nearer approximating a vein than anything I saw in my examination of this ground. [171]

Q. Did you take any assays from that?

A. I did, yes, sir.

Q. And they were introduced in evidence on the former trial?

A. I believe they were, if I am not mistaken.

Q. Do you remember a cut or shaft which was of large size, about six by ten by ten, lying easterly about 150 feet from the location monument on the Midas; do you remember that cut or shaft?

A. I think that was a shaft that I examined, and which was pointed out to me as having been at the original discovery point of the Yellow Jacket claim.

Q. That is the way you identify it? A. Yes.

Mr. SPRINGMEYER.—What is the number of that point, please?

Mr. THATCHER.—That is number 21, shaft number 21 on Exhibit "A."

Q. You made an examination of that?

A. An examination from the surface.

Q. You didn't go down in? A. No.

Q. Did you examine the dump?

(Testimony of Emmett D. Boyle.)

A. I examined the dump, yes, sir.

Q. What did you find there?

A. There was the shattered country rock, with some slight iron and copper stain.

Q. Do you remember whether or not you went north from there, from the discoverey monument, between four and five hundred feet, to a cut?

A. I am not absolutely able to identify the cut marked number 17 as the one which I examined, but I did examine a cut to the parallel ravine, to the ravine in which workings number 20 and 22 are situated, which exposed absolutely unaltered quartzite.

Mr. SPRINGMEYER.—(Q.) Did you say an altered quartzite?

A. Absolutely unaltered quartzite.

Q. What is the point? A. It is 17, I believe.

Mr. THATCHER.—(Q.) Are you sure whether or not 17 was that [172] place, or whether it was south from there?

A. I would not be able to absolutely say; I have misplaced the notes taken on the ground at the time, and it is rather difficult for me to identify any of these various points after the lapse of time.

Q. From the examination that you made at that time, do you remember what the results of your assays were; you can answer that yes or no?

A. Well, I recall that most of them—

Q. No, just say yes or no; do you remember?

A. No, I don't remember absolutely, no, sir.

Q. I call your attention to a purported ore assay, report of Carson Assay Office, W. O. Woodbury, As-

(Testimony of Emmett D. Boyle.)

sayer, of date December, 1913, two sheets, and ask you if those were the assay returns given you by Mr. Woodbury? (Hands paper to witness.)

A. I cannot identify these sheets in any other way than to say that the only samples which I took to Mr. Woodbury in that period were the ones taken from this Copper Canyon property, so I presume these are the assays.

Q. They are addressed to you, E. Boyle, made at your request? A. Yes, sir.

Q. If those are the assays which were introduced in your testimony in the last trial, they represent the returns that you received at that time?

A. They were the only assays left with Mr. Woodbury during that period, that I can recall.

Q. The only assays which you introduced in evidence in this case at the last trial were this one bunch of assays; you didn't have any more assays?

A. No, sir, but I notice that that return is only for the copper, the copper determination; I recall that I had it assayed for gold and silver as well.

Q. That was Defendant's Exhibit "B," was it not, at that trial; that was for copper only?

A. Copper only. [173]

Q. I call your attention to two sheets marked Defendant's Exhibit "O"; were those returns from the same samples? A. Yes, sir.

Q. And what was that assayed for?

A. That was assayed for gold and silver.

Q. You took those samples personally?

A. Yes, the samples that were taken there were

(Testimony of Emmett D. Boyle.)
taken by me personally.

Q. Can you identify these samples, as to where they were taken without your notebook?

A. No, sir.

Q. Could you do so from your testimony on the former trial? A. I believe so.

Q. Will you examine your testimony on the former trial and endeavor to locate the points from where these assays were taken? A. Yes.

Mr. THATCHER.—May I have permission to withdraw these?

The COURT.—Yes.

Mr. THATCHER.—(Q.) Will you examine those afterwards, Mr. Boyle? A. I will.

Q. From the examination made at that time, did you come to any conclusion as to whether there was exposed at any point or points a vein or lode, other than what you said with reference to the tunnel on the Midas—at any of the points you examined?

A. Well, the distinction between a fracture zone or fault and a vein, within the meaning of the statutes—

Mr. SPRINGMEYER.—Wait a moment. Don't testify to your interpretation of the statutes, Governor Boyle, only testify to the fact.

A. Well, I have been asked to testify as to whether or not I saw a vein or lode; now I was going to say that a vein is any sort of an opening in general country rock which is filled with a material [174] that may differ from that which surrounds it, and, according to the theories of the geologists, filled by some

(Testimony of Emmett D. Boyle.)

one of the agencies which go to make up veins; but a mineral bearing vein and an ordinary vein are two different things; I was going to qualify my statement simply in that respect.

Mr. SPRINGMEYER.—It is all right to do that, but I don't want you to testify to your understanding of the law or the statutes.

A. I am not at all; I am simply attempting to testify as to whether or not there was a vein of mineral-bearing rock in place on that ground, that is all I am attempting to do; if you have any objection to that, I will modify it.

Mr. SPRINGMEYER.—Not at all.

Mr. THATCHER.—(Q.) You did find, then, what a geologist might term a vein?

A. Yes, there were deposits there which geologists might term a vein.

Q. What is the geological definition of a vein; what is a vein in terms of geology?

A. Well, there are many definitions, but perhaps the best, as I view it, is, a vein is a deposit filling a fissure or an opening in the general country rock, supplied by either hydrothermal or pneumatolitic agencies, as distinguished from a filling or matter made by the injection of molten matter in such a cavity or fissure.

Mr. SPRINGMEYER.—Pardon me, that is pretty technical for a lawyer, I would just like to get that down carefully, Governor. (By direction the reporter reads the answer.)

Mr. THATCHER.—(Q.) In other words, I take

(Testimony of Emmett D. Boyle.)

it that any fissure or break, or contact which contains any other matter or filling will constitute in the geological expression, a vein?

A. It does if it doesn't contain matter injected into the fissure in a molten form, in which case the geologists usually refer to it by some other name. [175]

Q. What is the other name?

A. Well, dikes, sills, laccolites, batholiths.

Q. Now, going away from the geological definition, did you discover upon that ground what you as a mining engineer or a mining man, would consider a vein or lode?

A. I did not, as a commercial proposition, which I would locate with the expectation of ever having it return,—or ever getting commercial returns; I saw nothing on the ground which I examined which I would consider a vein or lode.

Q. Did you see anything there which you would consider as a mining man, worthy of work and development, within the boundaries of these three claims, with the expectation of finding ore?

A. I did not.

Mr. THATCHER.—You may cross-examine.

Cross-examination.

Mr. SPRINGMEYER.—(Q.) Governor Boyle, you were State engineer of Nevada in 1908 and 1909, weren't you, and part of 1910?

A. No, sir, I was State engineer of Nevada from March 8, 1910, to March 11, 1911.

Q. And when did you become tax commissioner?

A. I believe about the first of April, 1913.

(Testimony of Emmett D. Boyle.)

Q. And how long did you hold that office?

A. I held the office until, I think, the 10th of August, 1914.

Q. You made the examination of these claims at the time you were tax commissioner?

A. I did, yes, sir.

Q. And during that time you were not actively engaged in the practice of your profession as a mining engineer, were you?

A. No, sir, excepting that I had my mining office running at that time; I had an assistant at that time who conducted my [176] mining engineering practice for me, and by arrangement—by written permission of Governor Oddie at the time I entered the service of the State as tax commissioner, I was permitted to continue my professional work as long as the same did not conflict with duties which I owed to the State.

Q. I don't mean to imply there was anything wrong with your making this examination, Governor, but I simply want to bring out that during the sixteen years you have been a mining engineer there were three or four years you were not actively engaged in the practice of your profession, during the time you occupied these positions.

A. Well, I began the active practice of the profession something over twenty years ago. As you know, I was the son of a prominent mining superintendent, who gave me ample opportunity during the period before I became a mining engineer, to engage in certain classes of work which involved the

(Testimony of Emmett D. Boyle.)

study of mining engineering; I should say that I have had at least sixteen years practical and continuous experience as a mining engineer.

Q. Well, your first work, of course, was more in the nature of getting acquainted with the rudiments of mining, not strictly as a mining engineer, is not that correct—you were too young

A. Well, I think the mining engineer's business is largely that of getting acquainted with the rudiments of mining.

Q. You don't think any man ever attains absolute proficiency in the science of mining engineering?

A. No, sir, he does not.

Q. You spent two days, you say, on the examination of these claims

A. The greater part of two days; I went in, as I recall it, got in in the morning of one day, and left in the afternoon of the second day, and devoted practically all of that time to the examination. [177]

Q. Were any of the openings in the way of shafts, or cuts, or tunnels cleaned out to enable you to make a careful examination Governor?

A. Every opening I examined and reported on here showed a good exposure of the formation.

Q. You didn't notice particularly the depths of any of the cuts or shafts, did you?

A. I did. I made a measurement in each case, and entered it in my notes, and I think at the former trial I testified in detail as to those matters.

Q. Well, the shafts and cuts were pretty well filled up, weren't they, when you made your examination

(Testimony of Emmett D. Boyle.)

A. There was one shaft which I was unable to investigate; as I said before, I had no means of getting down to it; the bottom of the shaft at the time I looked at it was covered with snow; I could not say as to what else might have been in there.

Q. What shaft was that that was covered with snow?

A. Where the location monument, the original location monument of the Yellow Jacket was.

Mr. THATCHER.—That is number 21 on this map.

Mr. SPRINGMEYER.—(Q.) It is the point marked on the map as the original monument of the Yellow Jacket? A. Yes.

Q. And you don't know whether that was the original discovery monument of the Midas or not, do you?

A. I do not, no, sir.

Q. Of that cut, then, you didn't make such an examination that you could say positively it did not contain a vein or mineral-bearing rock in place, did you, Governor?

A. Well, I could only see the sides of that cut from the collar of the shaft, and I brought in some of the material selected from the dump, which I believe represented the general character of the material exposed on the sides of the cut, and deposited it here with the Court, but I didn't go down into the shaft. [178]

Q. Well, Governor Boyle, if the vein on the surface was only a foot wide, the sample you took would not be representative really, would it?

(Testimony of Emmett D. Boyle.)

A. I don't think that sample was returned for assay; it was simply brought in to show the general character of these fracture zones, for the benefit of the Court and jury.

Q. You would not want the jury to understand, then, from the sample that you took,—understand you to say that there wasn't mineral in that vein?

A. What sort of mineral?

Q. Carrying values.

A. Well, I don't know a thing about the values in that particular formation; I took it from my observations there that this shaft was put down on the fracture zone, which was very slightly mineralized; it did show very slight traces or stains of copper.

Q. You say you took the sample for the purpose of showing the character?

A. Showing the character of it.

Q. Rather than for the purpose of getting it assayed? A. Yes, sir.

Q. I thought you said in direct examination, to determine whether a mine is of commercial value or not, you had to determine the assay values in a vein or fracture?

A. I didn't know that I made any such statement as that.

Q. That is not a fact; I am under a misapprehension? A. No, sir.

Q. In what way do you determine the commercial value of a piece of ground, as to whether or not it is of commercial value, as to locating it as a mine?

A. You would do it by making tests of the rock,

(Testimony of Emmett D. Boyle.)

as to what the mineral contents were.

Q. You don't think that it carries values is of importance, do you? A. I do, absolutely.

Q. Inasmuch as you have not had an assay made of the fracture, [179] what you call a fracture, at this particular place, you would not say that it was not of commercial value?

A. I don't think I said I didn't make an assay.

Mr. THATCHER.—I object to that; he has not said where these assays were taken from; he said he desired to refresh his memory from his former testimony, as to where he took the assays.

WITNESS.—I don't recall the place I took the assay from.

Mr. SPRINGMEYER.—He said that he didn't take an assay from that point.

Mr. THATCHER.—He said that he didn't assay the sample that he took off the dump; he brought it here as a specimen, but he didn't say that he took no other assays there.

Mr. SPRINGMEYER.—You say you took others; I don't want to misunderstand you.

A. I don't want you to think I am attempting to quibble on this; I simply don't recall exactly where I took the samples at that time, but I do say, if my memory does not play me false, that I took a sample from the dump of that shaft, which I believe to be a fairly representative sample of the material as exposed on the sides, and brought it into court, and deposited it here as an exhibit; that is what I would like to have you understand.

(Testimony of Emmett D. Boyle.)

Q. Well, did that sample contain any of the visible copper?

A. It had copper stains, yes, sir, but they are very faint; there are copper stains running through that whole country, as I believe I testified before.

Mr. SPRINGMEYER.—It seems to me if Governor Boyle is not positive as to what place he took the samples and had the assays made, he had better determine that before we continue with the cross-examination.

The COURT.—You can cross-examine him after he refreshes his memory. [180]

Mr. SPRINGMEYER.—(Q.) So we may understand that, then, you say the sample you took from the dump was a representative sample, do you?

A. I believe it was a sample of the best-looking material I could find on the dump, of the stuff most highly mineralized on that dump, and from a rock standpoint it showed the character of the formation in the shaft, typical rock formation.

Q. Do you think a sample taken that way fairly shows whether or not a vein in an opening is of commercial value?

A. I didn't take it with any such idea at all; I simply took it, as I recall it, to show the very high degree of alteration to which that fracture zone had been subjected.

Q. It comes back to my question, then, that you are not prepared to say from the sample you took on the dump, that the fracture in that opening was not of commercial value, are you?

415

(Testimony of Emmett D. Boyle.)

A. Well, we all perhaps make mistakes in judging rock by looking at it, but I would be quite willing to declare off of the witness-stand—I don't like to declare anything under oath I don't know positively; but I would be quite willing to say off the witness-stand that the rock was in all probability worthless; it had all the earmarks of a worthless piece of rock, and that was why I brought it into this court.

Q. And still there might be rock in that vein, which you did not assay, and of which you did not take a sample, which would carry mineral values that would make it of commercial value; isn't that a fact, Governor Boyle?

A. It might be, but I doubt it.

Q. As a matter of fact, there are barren spots in all veins, aren't there?

A. Yes, but this appeared to me like it was one continuous barren spot, the thing I was attempting to indicate in bringing in this sample. [181]

Q. Yes, but you could not go down into the cut on account of the snow and didn't examine it at the bottom, so possibly you might be mistaken about that.

A. No, I didn't see the bottom of the cut, but I saw the sides and the ends of this cut, and the general impression that the cut conveyed to me was that the bottom was perhaps of the same character as the sides; I don't know what was in the bottom, however.

Q. Did you say you went into the long tunnel on the Midas? A. Yes, sir, I was in that tunnel.

Mr. THATCHER.—That is "22" on this map?

(Testimony of Emmett D. Boyle.)

A. Yes, sir.

Mr. SPRINGMEYER.—(Q.) You said that came nearer approximating a vein than anything you saw on the three claims?

A. Came nearer approximating a commercial vein than anything I saw on the claims.

Q. Do you recall about how wide the fracture was there?

A. No, I do not; it was several feet wide, I should say.

Q. Now, if it should appear that samples taken from the vein or fracture in this Midas tunnel, in one place would show values of $11.50 in gold, silver and copper, you would say that clearly that was of commercial value, wouldn't you?

A. I would say that was an assay of commercial value, yes, sir.

Q. You would say that the claim might be workable as a mine, wouldn't you?

A. No, sir; indeed I would not.

Q. Would you say it would not be locatable as a claim?

A. It might be locatable as a claim, but my recollection is that the sample taken by myself in that tunnel showed very low returns; and I would want to know something of the character of the sample that was taken from that to know whether it would in my judgment be considered as a mine or not, or a potential mine.

Q. When two men examine properties at different times, they [182] oftentimes get different results

(Testimony of Emmett D. Boyle.)

in their assay values, do they not? A. Yes, sir.

Q. And usually the man, for instance, who wants to sell a claim has an expert examine, and his returns are higher than the returns of the man who is examining for the intending buyer; is not that a fact?

A. Not usually, if responsible mining engineers are employed for the purpose of sampling the property.

Q. You say even though this vein carried values of $11.30 or $11.50, in gold, silver and copper, and was several feet wide, that you would not think it could be worked as a commercial mining proposition?

A. I didn't say that; I said that I would want to know before answering your question categorically, as to whether or not I would consider that a workable proposition on an assay of $11.30, I replied that I would want to know something about the manner in which the assay was taken, and what it represented; you could go into any of that country, for I should say miles around, and scrape the copper stains off of the rocks, and have them assayed, and they would probably give you very good returns, and they might be turned in as an assay.

Q. Well, would you consider a vein four feet wide, fairly sampled by a competent mining engineer, carrying value of $11.50 of commercial value as a workable mine?

A. I would consider that it had potential values as a mine.

Q. In fact, there are not very many mines that pay at the very beginning, or when they are opened up

(Testimony of Emmett D. Boyle.)

on the surface, are there, Governor? A. No, sir.

Q. If you were passing upon this particular proposition, you would want to make a more thorough examination of it, in the event the values were $11.50, than you have made, would you not?

A. I will tell you frankly what I would do if I had ever been [183] sent to that property to pass upon it as a mining proposition; I would have spent about thirty minutes in reaching a conclusion that it was absolutely worthless; the ground is like the ground that is taken up contiguous to almost every mining—

Q. (Int'g) Well, never mind,

Mr. THATCHER.—Let him finish; you asked for his opinion.

Mr. SPRINGMEYER.—I don't want him to volunteer a lot of information; just answer the question.

(By direction the reporter reads the question.)

A. I will say the general impression I got of the ground was—

Q. Well, just wait a moment. Couldn't you answer that yes or no?

A. I will answer it no; I should qualify that, however; it is rather a broad question. I would say that an assay in one portion of the ground, indicating that one of those veins contained $11.46 would not satisfy me in the face of the other unfavorable conditions, which are so obvious, that the ground had any potential commercial value; that would be the answer to that question.

Q. Well, as a matter of fact, Governor, prospectors very frequently indeed locate and hold and patent

(Testimony of Emmett D. Boyle.)

claims, which mining engineers who are more skilled in the profession, turn down absolutely, don't they?

A. They do absolutely, yes.

Q. The ordinary prospector finding a fracture of this sort, and getting the values that I have given, would be justified in locating it as a mine, wouldn't he?

A. As a millsite, I should say, perhaps, but not as a mine. A great deal of the ground that is located in this country is not located for strictly mining purposes; there is no other way to obtain title to the ground that surrounds a man's valuable deposit, excepting to locate it in the form of lode or placer locations, [184] and the usual tendency is for a man who has a deposit of commercial value to locate the surrounding territory to keep off other persons, or to supply room for dumps or buildings, or things of that sort, where the showing would not be sufficient to justify anyone in locating it because of the commercial value of that particular piece of ground itself.

Q. Certainly, we understand those things.

A. We all do that.

Q. Very frequently there are such locations made, and very frequently also miners or prospectors will locate claims which mining engineers turn down; that is done every day, isn't it? A. That is true.

Q. So a prospector or a miner without technical knowledge, would be more than justified in locating it as a mining claim, would he not?

A. Well, he would be justified in locating it as a mining claim if he had some other use for it than to

(Testimony of Emmett D. Boyle.)

take gold and silver and copper out of it.

Q. You said the prevailing formation on these claims was quartzite, didn't you?

A. I took it to be the Weber quartzite, yes, sir.

Q. How did the quartzite beds dip?

A. They dip westerly in that section of the country.

Q. What caused them to dip westerly, in your opinion?

A. Well, my idea is that the Battle Mountains are the uneroded portion of a large anticline that at one time included both the Shoshone range and the Battle Mountain range, and that the axis of this anticline is perhaps now the Reese River Valley. I am indebted to Clarence King's Observations on the Fortieth Parallel for that idea.

Q. Clarence King's observations on the fortieth parallel were [185] made in 1867, weren't they?

A. They were, yes.

Q. And he also says it is a quartzite formation, or words to that effect, doesn't he?

A. He says it is the Weber Quartzite, and in order to confirm that I took rock samples of the quartzite to Professor Jones, the petrographer of the University of Nevada, who confirmed the statement; in fact, we did it together; we crushed the matter up and put it in water under the microscope.

Q. Since Clarence King's time great strides have been made in geological science, haven't there?

A. Well, not to such an extent that anybody has successfully controverted his theories regarding the

(Testimony of Emmett D. Boyle.)

geology of this basin country, so far as I know.

Q. Well, as a matter of fact, Governor, Clarence King's fortieth parallel survey, was only a recognizance, or what geologists call a "rough riding over," wasn't it?

A. There was some critical work done on that survey; and some of it was long-range geology, doubtless.

Q. What do you think of Mr. Ransome of the United States Geological Survey?

A. Mr. Ransome is a very able geologist.

Q. One of the leading men of the country, isn't he?

A. I believe so.

Q. Did you ever hear what he said regarding Clarence King's fortieth parallel survey?

A. I think I have read some of his strictures on the work of Mr. King.

Q. He does not speak very highly of Mr. King's fortieth parallel survey with reference to the Humboldt District, including the Battle Mountains, does he?

A. I don't recall having read anything, any criticism of his touching on that subject.

Q. Well, I have it here somewhere, I think I can find it. If [186] you should learn that Mr. Ransome in his report upon this same district, made by him in 1909, used language to this effect: That much of the material described by Clarence King as quartzite is not quartzite at all, and that thorough study would change many of the names applied by Mr. King, would that alter your opinion as to the

(Testimony of Emmett D. Boyle.)

geological conditions in the Battle Mountain mining district?

A. Not in the slightest degree, no.

Q. You think that Mr. Ransome might have been wrong?

A. No, Mr. Ransome may be right.

Q. You are satisfied that it is quartzite?

A. I believe it is a quartzite. As I say, we took the material, a specimen of the rock, and applied the very simple test of crushing it up in water, and putting it under the microscope, and you could still see evidence of angular grains, salicious grains in it; it looks like a quartzite, and I believe it is a quartzite.

Q. Where did you take these samples, from the southwesterly side of the claims or from the easterly side?

A. I believe they were taken—there was one of the samples taken for assay, I put a piece of material in my pocket and put it aside for the purpose of having it determined; I would not say exactly where it was taken, excepting that it was from one of the places where the assays were made.

Q. You said in some parts of these claims the formation was altered quartzite, and in other parts it was an unaltered or sraight quartzite?

A. Yes, that is, it was not subjected to crushing, or any hydrothermal alteration, such as is noticeable in other parts of the system.

Q. Isn't it a fact that the quartzite itself is an altered rock, an altered sedimentary rock? [187]

A. Yes, it is true that in—

(Testimony of Emmett D. Boyle.)

Q. Just wait a moment. Isn't your use of the expression or term "altered quartzite" an unfortunate one?

A. I don't think so, I am referring to the quartzite after it reached the stage of quartzite; an alteration that took place subsequent to that would be an alteration of the quartzite; I am not referring to any of the alterations that brought the original rocks up into the condition of quartzite; no doubt it was sandstone before it was quartzite, and undoubtedly gravel with grit, before it became sandstone.

Q. Can you refer to an author who uses the term "altered quartzite"? A. Altered quartzite?

Q. Yes. A. I don't know any offhand.

Q. Do you think the term "altered quartzite" is particularly applicable to the conditions on these claims?

A. You are getting mighty technical. We refer to any rock which has been subjected to influences, which changes its character, as altered; now that is more or less popular.

Q. Once it is altered it is altered; it cannot be double altered very well, can it? A. It can.

Q. It can?

A. Indeed it can; there is such a thing as secondary alteration with nearly all sorts of rocks.

Q. When quartzite is altered what changes take place?

A. It would depend to a certain extent on the chemical composition of the quartzite. Now this quartzite—which I take it to be—contained a con-

(Testimony of Emmett D. Boyle.)

siderable amount of aluminum, and alterations taking place there would perhaps result in the formation of kaolin, or some of that material.

Q. How do you determine the presence of aluminum?

A. I take that from published geological reports on the subject [188] I cannot refer at the present moment to the report I took it from, it may be the King report and may be Ransome's.

Q. You cannot give that as a result of your own personal observations and experiments, can you?

A. In a general way I can give it, yes; in a specific way, no; I can give it to this extent; I know the quartzite that exists in this state contains a considerable percentage of aluminum.

Q. You said it was an altered quartzite, which you considered to be a Weber quartzite, how did you determine that it was a Weber quartzite?

A. I told you that the quartzites in the Battle Mountain Range have been designated and identified geologically by King as Weber quartzites; they are correlated with other quartzites which I believe have been discovered in Utah.

Q. When you say it is Weber quartzite, you simply say it was because King said so in his report?

A. I believe that is exactly the reason I said it.

Q. You will admit since King's time great steps in geological science have been made, will you not?

A. Some, yes.

Q. Will you not admit also, Governor, that nothing has been published concerning the Battle Moun-

(Testimony of Emmett D. Boyle.)

tain Range in the way of designating this as Weber Quartzite, since Clarence King's time?

A. Published by whom?

Q. By the United States Geological Survey.

A. I don't know whether it has or not; I have not read all the publications.

Q. Any that you have read?

A. No, I would not say that; I may have read it, and I may not have read it, I don't recall.

Q. Did you make any petrological examinations of this Weber quartzite to determine its character?

A. Simply to crush it up and put it under the field of microscope and water, that is all. [189]

Q. What could you see when you put it under the microscope?

A. Well, it showed the angular, almost microscopic angular structure of an altered sandstone, which is a quartzite.

Q. Would not that come from crushing up the rock?

A. No, there is a distinction it is rather difficult for me to describe.

Q. Were the grains pretty good size?

A. Well, they were microscopic, I presume.

Q. Well, microscopically speaking, were the grains good size, or not?

A. Yes, they were of a sufficient size to show to my satisfaction that the rock was an alteration from a sandstone.

Q. How in that way could you distinguish the difference between quartz and aluminum, under a microscope?

(Testimony of Emmett D. Boyle.)

A. You could not, not in such a simple test as that.

Q. Well, how is it that you know it positively?

A. Know what?

Q. That it is Weber Quartzite?

A. I didn't say that I did; I said that I think it is the Weber quartzite; it is that quartzite which Clarence King refers to in his report as the Weber quartzite. As you know, geologists name these rocks and formations very much as a miner goes out and names a claim; he has to have something to refer to by, and the quartzite of that range and of the Shoshone range has been called the Weber quartzite. Now I say that I take this to be the Weber quartzite.

Q. When you were examined on your direct, I understood you to say that it was positively Weber quartzite, but you now modify that and say that you think so because of Mr. King's observations, and this slight test that you made.

A. Well, if I said positively at any time that any rock was any particular formation, I want it to be modified right now, because [190] none of us can do that; we cannot do it without elaborate determinations, and then we are not absolutely sure.

Q. Now, Governor, did you find any fossils in the specimen you examined?

A. No indeed, I did not.

Q. Don't you know that is one of the characteristics of Weber quartzite? A. Fossils?

Q. Yes.

A. I never saw a fossil in that section of the country, that is, in Weber quartzite.

(Testimony of Emmett D. Boyle.)

Q. If microscopic slides were made of this rock, numerous specimens, and a competent petrologist should pronounce the formation something different from quartzite, would you then be inclined to think that those claims might be of a different nature than you have testified to?

A. Why, as I have said repeatedly, I don't know absolutely what the formation is in that section, but I believe that it is quartzite.

Q. But if it were a rhyolite, we will say for example, any one of the so-called porphyritic rocks, you would be inclined to change your view as to the value of these claims, wouldn't you, Governor?

A. No, sir.

Q. You don't think then, that the fact that the formation is, in your opinion, quartzite, is decisive of the matter of determining the value of the claims?

A. I don't think it has anything to do with it.

Q. You don't think it has anything to do with it?

A. The quartzites of both those ranges, if they are quartzites, and I believe they are, contain valuable mineral deposits.

Q. Would you say that it was not possible, in view of the fact that these quartzite beds have been dipped to the west, that there was an igneous intrusion on the easterly side of the claims—easterly side of the canyon, we will put it? [191]

A. There may be an igneous intrusion there.

Q. Well, wouldn't it be very probable, Governor, in view of the fact that the quartzite beds are dipped

(Testimony of Emmett D. Boyle.)

to the west, that there was an igneous intrusion on the east?

A. It would be possible, it would not necessarily follow; it would be probable. That might have been due to the thrusting up of the formation by the intrusion of molten matter under the formation, or in between the bedding planes of that and other formations underlying it, or it may have been due to faulting or crumpling; I don't know how it happened; I am not prepared by any examination I ever made of that section to account for the dynamic geology of that particular section of the country.

Q. You are not prepared to say there was not molten intrusion on the easterly side of the claims which threw the quartzite beds to the west, and forced them to dip to the west, in the manner you have testified to, are you? A. No, sir.

Q. In fact, you have not made a careful enough geological examination to decide those matters, have you?

A. I did this much, I noted the gravels in the openings in the creek, and I was surprised at the small amount of igneous rock that I found there; igneous or any other character of rocks that I took to be igneous rocks.

Q. Well, the wash in the canyon is quite deep, so far as you observed it, isn't it?

A. Yes, and I saw it to bedrock, from the surface to bedrock.

Q. The bedrock that you saw was dipping to the west, wasn't it?

(Testimony of Emmett D. Boyle.)

A. I think it was, yes; that is, the bedding planes in the bedrock, you mean?

Q. Yes. A. Yes, I think so.

Q. Let me ask you if ordinarily fractures and shear zones don't dip in the same way as the formation? A. Not at all. [192]

Q. Do they dip in the opposite direction?

A. They are apt to dip in any direction. Let us assume for the sake of argument, that this is quartzite, and that it was thrust up by agencies of different character—bent up—this huge mass of material several hundred or several thousand feet thick; it is not so inflexible that it could be thrust up in that shape, or thrust down by faulting, without cracking in a great many directions, and every one of those cracks represents a fracture zone they may dip in any direction.

Q. As a matter of fact, the dips of the fracture zones on all three of these claims are easterly or northerly, and different from the dips of the quartzite beds, are they not?

A. Well, I only recall one place now where I noticed very distinct dips, and that was in the tunnel, but I do recall that the dip was in the direction of the tunnel, and the strike was at right angles with the tunnel, which would make it dip northwesterly.

Q. You say that you noted particularly the conditions in the canyon and on the hillsides—now the general formation is not exposed, is it, on the hillside?

A. On the west side of the canyon there is a pretty good exposure of the country rock, and at various

(Testimony of Emmett D. Boyle.)

places in the canyon, the gulches themselves, and in cuts and openings, my recollection is that the dip of the bedding planes was to the west; I think there is a sufficient number of exposures to permit me to say that definitely.

Q. Now just one or two more questions: You said that a lode was a mineralized filling of an opening, didn't you?

A. No, I didn't use the word "lode" as far as I know, in my testimony so far.

Q. Well, would this be a fair statement, that a lode is a mineralized [193] material filling in a fracture?

A. I believe I said that a vein was a mineralized fissure, or filling, or fracture in the country rock, with the qualification that speaking from a geological standpoint, that filling should have been made by either hydrothermal or gaseous action.

Q. But in simple language, which we who are not technical men may understand, it is different material than the surrounding country rock on each side of the fracture or opening, isn't it?

A. Well, usually it is, yes.

Q. It must be mineralized in order to be a vein?

A. Yes.

Q. It is a fact wherever there are fractures or shear zones the mineralizing waters may flow and deposit mineral, isn't it? A. True.

Q. Anywhere where there is a fracture, whether it is in sedimentary rock or in an igneous rock?

A. Yes, sir.

Q. Mineralizing waters may flow and deposit ore

(Testimony of Emmett D. Boyle.)

by cavity filling or replacement or interstitial filling, or impregnation, is not that right, to use the technical language? A. That is correct.

Q. So it is not impossible that in these three fractures on these three claims, mineralizing waters may have flowed, which deposited mineral values?

A. They may have, but I am rather in doubt if they ever did, because I din't see any evidence of it.

Q. You said something regarding the habit of miners in many places in locating claims which were not really veins, and which could not be held as lode claims, now isn't it a fact that if the locations of the Salt Lake No. 3, Midas and Evening Star are held bad, that a large percentage of locations in the State of Nevada could be held bad?

A. Yes, and if there ever had been any—

Mr. THATCHER.—I object to the question, if the Court please, [194] on the ground it is immaterial.

The COURT.—I think it is immaterial.

Mr. SPRINGMEYER.—That is all.

Mr. THATCHER.—(Q.) Governor, will you review your testimony, and give us the points from which you took your assays? A. I will.

Mr. SPRINGMEYER.—(Q.) Do you remember a conversation with Mr. Ralph which you had on the train, after you made the examination?

A. No; I recall a conversation with the attorney that was with Mr. Ralph—yes, I do, I had a conversation with Mr. Ralph on the train coming in.

Q. At that meeting, Governor, do you remember whether Mr. Ralph said to you something like this,

(Testimony of Emmett D. Boyle.)

"Well, Mr. Boyle, all I have to say is, if the title of the Glasgow-Western to the Salt Lake No. 3, Midas and Evening Star can be broken by those claim jumpers, then I can break ninety-five per cent of the lode claim locations in Nevada," and you replied, "I don't know but what you are right about that."

A. I don't remember the conversation.

Q. You don't remember?

A. No, sir. I will tell you what I do remember of the conversation, if you would like to hear it, as I recall it; Mr. Ralph asked me what I thought of the ethics of claim jumping, and I told him that I thought claim jumping in the usual sense of the word was unethical; and he asked me then if I saw any lodes or veins on that property, and I told him that I certainly did; there is one very splendid mineral deposit on what I believe to be the Washington claim; and the conversation was then, as I recall it, taken up with the attorney who accompanied Mr. Ralph.

Q. To interrupt you, do you know how close the Washington claim is on which you found this valuable deposit? [195]

A. Yes, the Washington claim is about the width of the claim, five or six hundred feet from the side line of the Washington, as I recall it, it is five or six hundred feet from the easterly side line of the Guy Davis, but the deposit dips in the opposite direction, dips away, it does not dip under the ground in controversy.

Q. Now go on with your conversation, was it any-

(Testimony of Emmett D. Boyle.)

thing substantially as I said it was?

A. Mr. Ralph made a very energetic effort to commit me on something going in; he produced a bottle of whiskey, and showed a great amount of sociability, and made a very great effort to get me committed on something that might be used perhaps to my detriment in cross-examination, but I was very careful not to say anything which could be used in that way, and I am confident I never made the specific statement that ninety-five per cent of the claims taken up in the State of Nevada were taken up illegally.

Q. He said to you that if his title to the claims could be knocked out, didn't you think ninety-five per cent of the claims in the State of Nevada could be knocked out in the same manner?

A. I will say so now; I do not recall having said it at the time and don't believe I did say it, but I will say it now, because ninety-five per cent of the claims in the State of Nevada are taken up just as these claims are taken up; they are not taken up with any idea of getting returns from them; they were not taken up with the expectation of getting any return, and there has been no return.

Q. In any event, you all took a drink, and everything was friendly.

A. Yes, we all took a drink, and everything was friendly.

Mr. SPRINGMEYER.—That is all. [196]

Mr. THATCHER.—(Q.) Mr. Ralph is a very sociable man?

A. Yes, he is; but I want to recall that statement;

(Testimony of Emmett D. Boyle.)

it was not, as I recall it, with Mr. Ralph; when I got into the car I got into the smoking compartment; Mr. Ralph, as I remember, had very little to say, but there was quite a talk with the attorney in the case, and I don't believe we discussed anything beyond the ethics of the mining profession, as I recall the conversation.

Mr. SPRINGMEYER.—No, I am not implying you did; I simply wanted to know if you didn't think it was the fact, and to refresh your memory I referred to that conversation, that if these locations were bad most of the locations in the State were. That is all.

Mr. THATCHER.—(Q.) Which one of the attorneys was that, of the various attorneys in this suit?

A. I don't recall; I recall he was a tall gentleman.

Q. Mr. Brown, Mr. Belford, Mr. Gillette or Mr. Gustin?

A. Mr. Gillette, I believe; I think it was Mr. Gillette.

Q. Will you refresh your memory and let us know after lunch, if you can, or some time during the day, the points from which these assays were taken?

A. Yes. [197]

**Testimony of D. S. Van Orman, for Plaintiffs (Recalled).**

Mr. D. S. VAN ORMAN, recalled as a witness, testified as follows:

Mr. THATCHER.—(Q.) Mr. Van Orman, what was the value of that cut number 8, your discovery

(Testimony of D. S. Van Orman.)

cut, what was the value in dollars and cents of your location and discovery shaft, sunk on the Guy Davis?

A. Fully twenty dollars.

Q. It was worth twenty dollars or more?

A. Yes.

The COURT.—That is the discovery shaft?

Mr. THATCHER.—That is the discovery shaft.

Mr. SPRINGMEYER.—On the Guy Davis Placer.

Mr. THATCHER.—On the Guy Davis Placer, yes. That is all.

Mr. HIBBARD (JUROR).—Was that twenty dollars a ton?

Mr. THATCHER.—No, the value of the work was twenty dollars. [198]

**Testimony of J. J. Healey, for Plaintiffs (Recalled).**

Mr. J. J. HEALEY, recalled as a witness, testified as follows:

Mr. THATCHER.—(Q.) Mr. Healey, I show you a picture, and ask you if you took that picture.

A. I did.

Q. What does it represent, and what is it a picture of?

A. It represents the location monument of the Midas claim.

Q. The location monument of the Midas claim?

A. Yes.

Q. Taken before the previous trial of this case?

A. Yes; it was taken after the injunction was served on us, the first injunction.

Q. Is the location monument in the same condition now? A. Yes.

(Testimony of J. J. Healey.)

Q. Does that show the rock and the general surroundings of the Midas, correctly? A. Yes.

Mr. THATCHER.—We offer it in evidence.

Mr. SPRINGMEYER.—This is only put in to represent the condition at the time it was taken?

Mr. THATCHER.—Yes.

Mr. SPRINGMEYER.—And it is not evidentiary of any condition at any subsequent time?

Mr. THATCHER.—It is the condition that existed there at the time he was on the ground.

WITNESS.—It is the condition that exists at the present time.

Mr. THATCHER.—(Q.) Does that represent the condition of that monument when you first saw it?

A. Yes.

Q. When you first went on the ground?

A. Yes, sir.

Mr. THATCHER.—We offer it in evidence.

Mr. SPRINGMEYER.—No objection.

(Photograph admitted in evidence and marked Plaintiffs' Exhibit "J.") [199]

Mr. THATCHER.—(Q.) I show you another picture and ask you what that is.

A. Location monument of the Evening Star.

Q. Is that in the came condition as when you first saw it? A. Yes.

Q. Does it represent the condition when you first saw it? A. Yes.

Q. And the surrounding country? A. Yes, sir.

Mr. THATCHER.—We offer it in evidence.

Mr. SPRINGMEYER.—(Q.) What time was that taken?

(Testimony of J. J. Healey.)

A. It was taken right after the first injunction was served on us, just before the first trial in November; also the present existing condition.

Q. How do you know that was the location monument of the Evening Star?

A. I found the location notice of the Evening Star, and it also was marked on the post "Location Discovery Monument."

(The photograph is admitted in evidence and marked Plaintiffs' Exhibit "K.")

Mr. SPRINGMEYER.—No cross-examination.

(The Court admonishes the jury and at 12 o'clock a recess is taken until 1:30 P. M.) [200]

AFTER RECESS—1:30 P. M.

(All parties present.)

Mr. THATCHER.—May it please the Court, I desire to introduce at this time a copy of the adverses filed; they have not all the blanks filled in, but they are the copies of the adverses; and the receipts from the receiver and register, and receipts for the filing of them, showing the date.

Mr. SPRINGMEYER.—This is not a certified copy, is it, General Thatcher?

Mr. THATCHER.—No, you said you would not require a certified copy.

Mr. SPRINGMEYER.—Will you testify it is a correct copy?

Mr. THATCHER.—I will testify that is a true copy of the adverse filed in these two actions.

Mr. SPRINGMEYER.—After you testify to that we have another objection we wish to make.

**Testimony of George B. Thatcher, for Plaintiffs (Recalled).**

Mr. GEORGE B. THATCHER. recalled as a witness, testified as follows:

Mr. FORMAN.—(Q.) General Thatcher, you are acquainted with these two documents which I hold in my hand? A. Yes, sir.

Q. Are these correct copies of the adverses filed in this action in the land office? A. Yes, sir.

Q. Some of the blanks are not filled in. (Hands paper to witness.)

A. This is a true copy of the adverse filed or made by George B. Thatcher as one of the owners of the Guy Davis placer for himself and on behalf of his co-owners, Guy Davis and Noah Faubert.

Q. Was that sworn to?

A. This was sworn to before an officer [201] authorized to administer oaths, exactly who the officer was I don't recollect.

Q. Were the blanks filled in in the original?

A. The blanks were properly filled in and properly sworn to; it was either sworn to before J. J. Mullin, notary public, to the best of my recollection, or before Mr. Josephs, Clerk of the Supreme Court; I am no sure before which one it was sworn to, but the blanks were duly filled in, and it was filed with the register and receiver of the United States Land Office at Elko.

Mr. ELLIS.—(Q.) It was signed, subscribed and sworn to?

(Testimony of George B. Thatcher.)

A. Subscribed and sworn to by George B. Thatcher.

Q. Only?

A. Yes, sir, only one man subscribed to the adverse claim. And this other one is a true copy of the adverse claim made and executed by George B. Thatcher as one of the owners of the Homestake placer, for himself and on behalf of his co-owners, Murray Scott, Frank J. Healey and William Forman. This was likewise subscribed and sworn to by me before an officer competent and authorized to administer oaths; who the officer was I don't recollect; and it was filed in the United States Land Office.

Mr. FORMAN.—(Q.) Was it accepted, and did you receive a receipt from the land office?

A. I did, I received a receipt from the register of the land office of the filing of the adverse itself, and I received a receipt from the receiver of the Elko Land Office for the payment of the fees.

Mr. FORMAN.—We now desire to offer these in evidence.

Mr. ELLIS.—(Q.) You are the only one who signed the last adverse also?

A. I signed both adverses, and I was the only one who signed either of the adverses.

Mr. FORMAN.—You signed, however, on behalf of your co-owners, did you, as stated in the affidavit?

A. As stated in the affidavit. [202]

Mr. FORMAN.—We offer these.

Mr. ELLIS.—If the Court please, the defendant

(Testimony of George B. Thatcher.)

objects in both of these cases to the introduction in evidence of the adverse or copy which has been tendered, purporting to have been filed in the United States Land Office at Elko, for the reason in the first place that it is not verified except by one of the protesting adversing claimants, whereas the statute of the United States governing those cases requires that it shall be subscribed by the person or persons making the claim, showing that if there is a plural number of persons, they must all subscribe and verify the adverse. On the further ground that it is not properly alleged in the complaint that the plaintiffs filed any such adverse, and it is not answerable to any of the allegations set forth in the complaint; and whereas this purports to be a suit in support of such an adverse, there is no sufficient allegation of an adverse upon which this proof can be based.

We don't raise any question, your Honor, as to the certification of the adverse; that is covered by an agreement and understanding between counsel, I mean as to the certification showing it is a correct copy of the original instrument, we don't raise any question on that, but we raise a question as to its sufficiency after it is thus proven, both in the matter of its verification, and as to its admissibility under the pleadings in this case.

The COURT.—You contend that the pleadings don't apply to this instrument that is offered?

Mr. ELLIS.—Yes, do not sufficiently allege an adverse on behalf of the plaintiffs so as to permit

(Testimony of George B. Thatcher.)

the paper, or any paper of that nature, to be introduced in evidence. If the Court desires any special argument on that we can present it, but we are willing to submit the objection in that form. [203]

(Discussion by counsel.)

Mr. THATCHER.—I call the Court's attention to paragraph 2 of the complaint. While it is true the word "defendant" is used in that paragraph, it must be apparent to the Court that it is merely a clerical or typographical error; and I ask leave at this time to amend the complaint by striking out the word "defendant" in paragraph 2, page 2, end of line 34 and commencement of line 35, as on file in this case with the clerk of the court.

Mr. ELLIS.—I am not sure that an amendment can rightly be made in the face of a pending motion, and in order to save our rights we desire to object to the making of the amendment applied for in each case.

The COURT.—Does the error occur in both complaints?

Mr. THATCHER.—No, only in one of them.

The COURT.—I will allow the complaint to be amended, and you may have an exception on the grounds already stated.

Mr. FORMAN.—We ask that these adverses be admitted in evidence, as identified by the witness.

The COURT.—The objections to the admission of those documents will be overruled, and they will be admitted.

Mr. ELLIS.—Defendant excepts to the admission

of the adverse in each case, if the Court please, on the grounds stated.

(The adverses are marked Plaintiffs' Exhibits "L" and "M" and read as follows:) [204]

**Plaintiffs' Exhibit "L"—Adverse Claim.**

ADVERSE CLAIM.

United States Land Office at Elko, Nevada.

In the matter of the application of Joseph Ralph, for a U. S. patent to the John John, Blue Jacket, Eagle, Midas, Evening Star, Copper Queen, Comet, Lucy, Reona, Salt Lake No. 1, Salt Lake No. 2, Salt Lake No. 3, Salt Lake No. 4, Salt Lake No. 5 and Salt Lake lodes, situate in the Battle Mountain Mining District, Lander County, State of Nevada.

To the Register and Receive of the United States Land Office, and to the Above-named Claimant:

Whereas, Joseph Ralph, did, on the 24th day of July, A. D. 1914, file in the district land office of the United States, at Elko, Nevada, a certain plat of survey of certain lodes together with his application for a United States patent for said lodes naming and calling the said lodes in said plat and application the John John, Blue Jacket, Eagle, Midas, Evening Star, Copper Queen, Comet, Lucy, Reona, Salt Lake No. 1, Salt Lake No. 2, Salt Lake No. 3, Salt Lake No. 4, Salt Lake No. 5 and Salt Lake lodes, situate in the Battle Mountain Mining District, County of Lander, State of Nevada; said survey and plat being designated as mineral survey No. 01544, and consisting of substantially 1500 linear feet together with surface ground 600 feet in width, one each of said lodes, and the said Joseph Ralph, did, at the same

time and place, give notice that he would apply for a United States patent for the above-described lodes and premises in substance as follows: [205]

NOTICE OF PUBLICATION.

M. A. No. 01544.

U. S. Land Office, Elko, Nevada,

July 24, 1914.

Notice is hereby given that Joseph Ralph, by his Attorney in fact, F. D. Brown, whose Post Office address is Battle Mountain, Lander Co., Nevada, has made application for patent on U. S. Min. Sur. No. 4175, John John, Blue Jacket, Yellow Jacket, Eagle, Midas, Evening Star, Copper Queen, Comet, Lucy, Reona, Salt Lake No. 1, Salt Lake No. 2, Salt Lake No. 3, Salt Lake No. 4, Salt Lake No. 5 and Salt Lake lodes situated in the Battle Mountain Mining District, Lander County, State of Nevada, in the unsurveyed portion of Tn. 31 N. Rn. 43 E. M. D. M. particularly described as follows:

JOHN JOHN LODE.

Beginning at Cor. No. 1, whence the N. E. Corner, Sec. 16, Tn. 31 N. Rn. 43 E. M. D. M. bears N. 3° 6′ 30″ E. 7917.5 ft.; thence N. 89° 5′ E. 600 ft. to Cor. No. 2; thence S. 6° 55′ East 1477.7 ft. to Cor. No. 3; thence S. 89° 5′ W. 600 ft. to Cor. No. 4; thence N. 0° 55′ W. 1477.7 ft. to place of beginning.

BLUE JACKET LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. of Sec. 33, Tn. 31 N. Rn. 43 E. M. D. M. bears S. 18° 16′ West, 5785.87 ft.; thence N. 20° 33′ W. 1484.3 ft. to Cor. No. 2; thence N. 69° 43′ E. 591.75 ft. to Cor. No.

3; thence S. 20° 49′ 30″ E. 1484.3 to Cor. No. 4; thence S. 69° 43′ W. 598.9 ft. to place of beginning.

YELLOW JACKET LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec. 33, Tn. 31 N. Rn. 43 E. M. D. M. bears S. 8° 27′ W. 5025.4 ft.; thence N. [206] 20° 54′ W. 764.7 ft. to Cor. No. 2; thence N. 19° 40′ W. 735.3 ft. to Cor. No. 3; thence N. 79° 46′ E. 601.17 ft. to Cor. No. 4; thence S. 20° 14′ E. 1499.57 ft. to Cor. No. 5; thence S. 79° 46′ W. 599.4 ft. to place of beginning.

EAGLE LODE.

Beginning at Cor. No. 1 whence the E. Cor. Sec. 33 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 0° 56′ E. 5481 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 9° 14′ W. 6103.3 ft. thence N. 20° 14′ W. 1487.73 ft. to Cor. No. 2; thence N. 69° 39′ E 586.36 ft. to Cor. No. 3; thence S. 20° 33′ E. 1487.76 ft. to Cor. No. 4; thence S. 69° 39′ W. 594.5 ft. to place of beginning.

MIDAS LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec. Tn. 31 N. Rn. 43 E. M. D. M. bears S. 0° 56′ E. 5481 ft.; thence N. 19° 40′ W. 1487.2 ft. to Cor. No. 2; thence N. 69° 44′ E. 591.7 ft. to Cor. No. 3; thence S. 19° 40′ E. 1487.2 ft. to Cor. No. 4; thence S. 69° 44′ W. 591.7 ft. to place of beginning.

EVENING STAR LODE.

Beginning at Cor. No. 1 whence S. E. Cor. Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 0° 56′ E. 5481 ft. thence S. 69° 44′ W. 600 ft. to Cor. No. 2; thence N. 19° 49′ W. 1487.2 ft. to Cor. No. 3; thence N. 69° 44′ E. 600 ft. to Cor. No. 4; thence S. 19° 40′ E. 1487.2 ft. to place of beginning.

COPPER QUEEN LODE.

Beginning at Cor. No. 1 whence the N. E. Cor. Sec. 16 Tn. 31 N. Rn. 43 E. M. D. M. bears N. 2° 55′ E. 8516.7 ft. thence S. 0° 55′ E. 1500 ft. to Cor. No. 2; thence S. 79° 46′ W. 600 ft. to Cor. No. 3; thence N. 0° 55′ W. 1500 ft. to Cor. No. 4; thence N. 79° 46′ E. 600 ft. to place of beginning. [207]

COMET LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 5° 57′ W. 8496.3 ft. thence N. 0° 55′ W. 1500 ft. to Cor. No. 2; thence N. 89° 5′ E. 600 ft. to Cor. No. 3; thence S. 0° 55′ E. 1500 ft. to Cor. No. 4; thence S. 89° 5′ W. 600 ft. to place of beginning.

LUCY LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 1° 54′ 30″ 8445.4 ft. thence N. 0° 55′ W. 1500 ft. to Cor. No. 2; thence N. 89° 5′ E. 600 ft. to Cor. No. 3; thence S. 0° 55′ E. 1500 ft. to Cor. No. 4; thence S. 89° 5′ W. 600 ft. to place of beginning.

REONA LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 3° 53′ 4″ 9225.95 ft. thence S. 79° 46′ W. 501.3 ft. to Cor. No. 2; thence N. 0° 55′ W. 1489.7 ft. to Cor. No. 3; thence 79° 46′ E. 501.3 ft. to Cor. No. 4; thence S. 0° 55′ E. 1489.7 ft. to place of beginning.

SALT LAKE NO. 1 LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 3° 53′ 45″ E. 9225.95 ft. thence N. 0° 55′ W. 1489.7 ft. to Cor. No. 2;

thence N. 79° 46′ E. 600 ft. to Cor. No. 3; thence S. 0° 55′ E. 1489. 7 ft. to Cor. No. 4; thence S. 79° 46′ W. 600 ft. to place of beginning.

SALT LAKE NO. 2 LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 1° 57′ 30″ W. 6381.36 ft. thence N. 19° 40′ W. 751.9 ft. to Cor. No. 2; thence N. 20° 11′ W. [208] 738.5 ft. to Cor. No. 3; thence N. 79° 46′ E. 592.7 ft. to Cor. No. 4; thence S. 20° 14′ E. 1491.94 ft. to Cor. No. 5; thence S. 79° 46′ W. 601.17 ft. to place of beginning.

SALT LAKE NO. 3 LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 4° 54′ E. 6906 ft. thence N. 20° 11′ W. 1500 ft. to Cor. No. 2; thence N. 69° 44′ E. 591.7 ft. to Cor. No. 3; thence S. 20° 11′ E. 1500 ft. to Cor. No. 4; thence S. 69° 44′ W. 591.7 ft. to place of beginning.

SALT LAKE NO. 4 LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 2° 8′ E. 7784.36 ft. thence N. 20° 11′ W. 1485.22 ft. to Cor. No. 2; thence N. 79° 46′ E. 591.2 ft. to Cor. No. 3; thence S. 20° 14′ E. 1485.5 ft. to Cor. No. 4; thence S. 79° 46′ W. 592.7 ft. to place of beginning.

SALT LAKE NO. 5 LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec. 33 Tn. 31 N. rn. 43 E. M. D. M. bears S. 3° 11′ W. 9961 ft. thence N. 0° 55′ W. 1287.2 ft. to Cor. No. 2; thence N. 89° 5′ E. 600 ft. to Cor. No. 3; thence S. 0° 55′ E. 1287.2 ft. to Cor. No. 4; thence S. 89° 5′ W. 600 ft. to place of beginning.

SALT LAKE LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 0° 16′ E. 9935.96 ft. thence N. 0° 55′ W. 1287.2 ft. to Cor. No. 2. thence N. 89° 5′ E. 600 ft. to Cor. No. 3; thence S. 0° 55′ E. 1287.2 ft. to Cor. No. 4; thence S. 89° 5′ W. 600 ft. to place of beginning. [209]

Total acres of lode claims, 304, 440 acres exclusive of Sur. No. 37, Virgin Lode, Sur. No. 38, Mary Louise Lode, Sur. No. 39, Mountain Rook Lode, Sur. No. 3842, Magdalene Lode, Sur. No. 1844, East Lake Superior Lode, Sur. No. 1843, Washington Sur. No. 1842, Ethel C. Lode, adjoining claims those above excluded also Silver King Lode, unsurveyed, William Lode unsurveyed, Tomboy unsurveyed, Iron Chief Annex Lode unsurveyed, Sur. No. 3842, Minnie Lode, were recorded on Jan. 11, 1893, Dec. 1, 1906, April 27, 1907, Dec. 1, 1906, August 7, 1907, August 7, 1907, July 26, 1907, August 27, 1907, Jan. 31, 1908, Feb. 3, 1897, Feb. 19, 1897, Feb. 8, 1897, Feb. 8, 1897, Feb. 8, 1897, June 3, 1913, and Feb. 8, 1897, respectively, in the office of the County Recorder Lander County, State of Nevada.

JOHN E. ROBBINS,
Register.

First Publication August 1, 1914.

Now, therefore, Noah Faubert, Geo. B. Thatcher and Guy Davis, citizens of the United States, over the age of twenty-one years, whose residences and post-office address are respectively as follows: Battle Mountain, Landor County, Nevada; Tonopah, Nev.

County, Nevada; and Battle Mountain, Lander County, Nevada; do on this —— day of September, 1914, hereby enter their protest and adverse claim against the issuance of a patent to said Joseph Ralph for his pretended claim upon the Salt Lake No. 3 lode as set forth in his plats and field-notes aforesaid for the following reasons, to wit:

1. That the surface ground and said so-called Salt Lake No. 3 lode set forth and contained in said plat and field-notes of said Joseph Ralph, or a great portion thereof, is not the property [210] of said applicant Joseph Ralph, neither is he entitled to hold the same under or by virtue of the local laws, rules and customs of miners in said mining district, the laws of the State of Nevada or of the United States relating to mining claims.

2. Because a great portion of the premises described in said plat and notice of said applicant and claimed by him as the so-called Salt Lake No. 3 lode is claimed adversely, and is owned by these protestants and adversants, and is in fact a portion of the Guy Davis placer as will appear by reference to the abstract of title herewith filed, made a part of this protest and adverse, and marked Exhibit "A."

3. Because these protestants and adversants, and their grantors, have held, occupied and possessed a great portion of the premises set forth and described by said Joseph Ralph in his plat and notice of the so-called Salt Lake No. 3 lode, long prior to the pretended discovery and location of said so-called Salt Lake No. 3 lode, such occupation and possession of these protestants and adversants, and their grantors,

having been under and by virtue of the full compliance with the local laws, rules and customs of said mining district, the laws of the United States and the State of Nevada pertaining to mineral lands.

4. Because these protestants and adversants and their grantors have held and possessed all that portion of the so-called Salt Lake No. 3 lode as represented on the plat of survey made by ——— and colored ———, said plat of said survey being filed herewith, marked Exhibit "B" and made a part of this protest and adverse, and these protestants and adversants are the original discoverers and locators of said Guy Davis [211] placer or *bona fide* purchasers for a valuable consideration through the original discoverers and locators of said Guy Davis placer by conveyance as shown by said abstract marked Exhibit "A."

5. Because a valid discovery, location and record of said Guy Davis placer was made by these protestants or their grantors in strict compliance with the local laws, rules and customs and the laws of the State of Nevada and of the United States, and while the same was vacant mineral land of the United States, open to occupation, and have kept and possessed the same by and through themselves or grantors actually and continuously from such discovery, location and record.

6. Because no discovery of mineral-bearing rock, lode or ledge in place was ever or at all made by said applicant Joseph Ralph or his grantors or predecessors in interest on said Salt Lake No. 3 lode, and that no annual labor or assessment work of any kind or

character was performed by said Joseph Ralph or his predecessors in interest during the year 1912 or for said year or at all prior to the entry, discovery and location by these protestants of said Guy Davis placer.

7. That said Joseph Ralph is not now a citizen of the United States, nor has he declared his intention to become such citizen of the United States, and on the contrary these protestants are informed and believe, and upon such information and belief allege that said Joseph Ralph is a citizen of the Kingdom of Great Britian and a subject of His Majesty King George.

8. That said published notice of application for patent hereto attached does not name or designate the Guy Davis placer as an adjoining and conflicting claim, although said applicant [212] well knew at the time of making said application that said Guy Davis placer was an adjoining and conflicting location with said Salt Lake No. 3 lode taking in practically and substantially all of the surface of said Salt Lake No. 3 lode.

WHEREFORE, these protestants and adversants enter this their protest and adverse claim against the issuance of a patent to said Joseph Ralph upon the so-called Salt Lake No. 3 lode.

This adverse is made and executed by Geo. B. Thatcher, one of the owners of said Guy Davis placer, for himself and on behalf of his co-owners Guy Davis and Noah Faubert.

GEO. B. THATCHER.

State of Nevada,
County of Ormsby,—ss.

On this —— day of September, 1914, before me ————, a Notary Public in and for said county and state, personally appeared the above-named Geo. B. Thatcher, who being first duly sworn, deposes and says: That he is one of the adverse claimants named in the foregoing protest and adverse claim above described by him; that he has read the same and knows the contents thereof; that the same is true in substance and in fact, and that said claim is made in good faith to protect his better and prior title and for himself and on behalf of his co-owners named in said adverse.

————————.

Subscribed and sworn to before me this —— day of September, 1914. **[213]**

————————,
Notary Public.

My commission expires ———.

DESCRIPTION OF THE GUY DAVIS PLACER CLAIM AND BOUNDARIES OF ITS CONFLICT WITH SUR. NO. 4175, SALT LAKE NO. 3 LODE CLAIM.

Feet.

Beginning at Cor. No. 1, Guy Davis Placer.

Identical with Cor. No. 1, Sur. No. 4175, Salt Lake No. 3.

Whence the S. E. Cor. of Sec. 33, Tn. 31, N. Rn. 43 E. M. D. B. and M. bears S–4–54′–E, 6906 ft.

Thence N–69–44′–E,

577.00 to Cor. No. 2, Guy Davis Placer.

Thence N–20–11′–W.

1500.00 to Cor. No. 3, Guy Davis Placer.

Thence S–69–44′–W.

577.00 to Cor. No. 4, Guy Davis Placer.

Identical with Cor. No. 2, Sur. No. 4175, Salt Lake No. 3.

Thence S–20–11′–E.

1500.00 to Cor. No. 1, the place of beginning.

Containing 19.86 acres.

All bearings expressed from the true meridian.

Plat attached. **[214]**

**Plaintiffs' Exhibit "M"—Adverse Claim.**

ADVERSE CLAIM.

United States Land Office at Elko, Nevada.

In the matter of the application of Joseph Ralph, for a U. S. patent to the John John, Blue Jacket, Eagle, Midas, Evening Star, Copper Queen, Comet, Lucy, Reona, Salt Lake No. 1, Salt Lake No. 2, Salt Lake No. 3, Salt Lake No. 4, Salt Lake No. 5 and Salt Lake lodes, situate in the Battle Mountain Mining District, Lander County, State of Nevada.

To the Register and Receiver of the United States Land Office, and to the Above-named Claimant:

Whereas, Joseph Ralph, did, on the 24th day of July, A. D. 1914, file in the district land office of the United States, at Elko, Nevada, a certain plat or survey of certain lodes together with his application for a United States patent for said lodes, naming and calling the said lodes in said plat and application the John John, Blue Jacket, Eagle, Midas, Evening Star, Copper Queen, Comet, Lucy, Reona, Salt Lake

No. 1, Salt Lake No. 2, Salt Lake No. 3, Salt Lake No. 4, Salt Lake No. 5 and Salt Lake lodes, situate in the Battle Mountain Mining District, County of Lander, State of Nevada; said survey and plat being designated as mineral survey No. 01544, and consisting of substantially 1500 linear feet together with surface ground 600 feet in width, on each of said lodes, and the said Joseph Ralph, did, at the same time and place, give notice that he would apply for a United States patent for the above described lodes and premises in substance as follows: [215]

NOTICE OF PUBLICATION.

M. A. No. 01544.

U. S. Land Office, Elko, Nevada.

July 24, 1914.

Notice is hereby given that Joseph Ralph, by his Attorney in fact, F. D. Brown, whose Post Office address is Battle Mountain, Lander County, Nevada, has made application for patent on U. S. Min. Sur. No. 4175, John John, Blue Jacket, Yellow Jacket, Eagle, Midas, Evening Star, Copper Queen, Comet, Lucy, Reona, Salt Lake No. 1, Salt Lake No. 2, Salt Lake No. 3, Salt Lake No. 4, Salt Lake No. 5 and Salt Lake lodes, situated in the Battle Mountain Mining District, Lander County, State of Nevada, in the unsurveyed portion of Tn. 31 N., Rn. 43 E. M. D. M., particularly described as follows:

JOHN JOHN LODE.

Beginning at Cor. No. 1 whence the N. E. Cor. Sec. 16 Tn. 31 N. Rn. 43 E. M. D. M. bears N. 3° 6′ 30″ E. 7917.5 ft. thence N. 89° 5′ E. 600 ft. to Cor. No. 2; thence S. 0° 55′ E. 1477.7 ft. to Cor. No. 3; thence S.

89° 5′ W. 600 ft. to Cor. No. 4; thence N. 0° 55′ W. 1477.7 ft. to place of beginning.

BLUE JACKET LODE

Beginning at Cor. No. 1 whence the S. E. Cor. of Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 18° 16′ W. 5785.87 ft. thence N. 20° 33′ W. 1484.3 ft. to Cor. No. 2; thence N. 69° 43′ E. 591.75 ft. to Cor. No. 3; thence S. 20° 49′ 30″ E. 1484.3 ft. to Cor. No. 4; thence S. 69° 43′ W. 598.9 ft. to place of beginning.

YELLOW JACKET LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 8° 27′ W. 5025.4 ft. thence N. [216] 20° 54′ W. 764.7 ft. to Cor. No. 2; thence N. 19° 40′ W. 735.3 ft. to Cor. No. 3; thence N. 79° 46′ E. 601.17 ft. to Cor. No. 4; thence S. 20° 14′ E. 1499.57 ft. to Cor. No. 5; thence S. 79° 46′ W. 599.4 feet to place of beginning.

EAGLE LODE.

Beginning at Cor. No. 1 whence the E. Cor. Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 9° 14′ W. 6103.3 ft. thence N. 20° 14′ W. 1487.73 ft. to Cor. No. 2; thence N. 69° 39′ E. 586.36 ft. to Cor. No. 3; thence S. 20° 33′ E. 1487.76 ft. to Cor. No. 4; thence S. 69° 39′ W. 594.5 ft. to place of beginning.

MIDAS LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 0° 56′ E. 5481 ft. thence N. 19° 40′ W. 1487.2 ft. to Cor. No. 2; thence N. 69° 44′ E. 591.7 ft. to Cor. No. 3; thence S. 19° 40′ E. 1487.2 ft. to Cor. No. 4; thence S. 69° 44′ W. 591.7 ft. to place of beginning.

EVENING STAR LODE.

Beginning at Cor. No. 1 whence S. E. Cor. Sec. 33

Tn. 31 N. Rn. 43 E. M. D. M. bears S. 0° 56′ E. 5481 ft. thence S. 69° 44′ W. 600 ft. to Cor. No. 2; thence N. 19° 49′ W. 1487.2 ft. to Cor. No. 3; thence N. 69° 44′ E. 600 ft. to Cor. No. 4; thence S. 19° 40′ E. 1487.2 ft. to place of beginning.

COPPER QUEEN LODE.

Beginning at Cor. No. 1 whence the N. E. Cor. Sec. 16 Tn. 31 N. Rn. 43 E. M. D. M. bears N. 2° 55′ E. 8316.7 ft. thence S. 0° 55′ E. 1500 ft. to Cor. No. 2; thence S. 79° 46′ W. 600 ft. to Cor. No. 3; thence N. 0° 55′ W. 1500 ft. to Cor. No. 4; thence N. 79° 46′ E. 600 ft. to place of beginning. [217]

COMET LODE.

Begining at Cor. No. 1 whence the S. E. Cor. Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 5° 57′ W. 8496.3 ft. thence N. 0° 55′ W. 1500 ft. to Cor. No. 2; thence N. 89° 5′ E. 600 ft. to Cor. No. 3; thence S. 0° 55′ E. 1500 ft. to Cor. No. 4; thence S. 89° 5′ W. 600 ft. to place of beginning.

LUCY LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 1° 54′ 30″ W. 8445.4 ft. thence N. 0° 55′ W. 1500 ft. to Cor. No. 2; thence N. 89° 5′ E. 600 ft. to Cor. No 3; thence S. 0° 55′ E. 1500 ft. to Cor. No. 4; thence S. 89° 5′ W. 600 ft. to place of beginning.

REONA LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 3° 53′ 4″ E. 9225.95 ft. whence S. 79° 46′ W. 501.3 ft. to Cor. No. 2; thence N. 0° 55′ W. 1489.7 ft. to Cor. No. 3; thence N. 79° 46′ E. 501.3 ft. to Cor. No. 4; thence S. 0° 55′

E. 1489.7 ft. to place of beginning.

SALT LAKE NO. 1 LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 3° 53′ 45″ E. 9225.95 ft. thence N. 0° 55′ W. 1489.7 ft. to Cor. No. 2; thence N. 79° 46′ E. 600 ft. to Cor. No. 3; thence S. 0° 55′ E. 1489.7 ft. to Cor. No. 4; thence S. 79° 46′ W. 600 ft. to place of beginning.

SALT LAKE NO. 2 LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 1° 57′ 30″ W. 6381.36 ft. thence N. 19° 40′ W. 751.9 ft. to Cor. No. 2; thence N. 20° 11′ W. 738.5 ft. [218] to Cor. No. 3; thence N. 79° 46′ E. 592.7 ft. to Cor. No. 4; thence S. 20° 14′ E. 1491.94 ft. to Cor. No. 5; thence S. 79° 46′ W. 601.17 ft. to place of beginning.

SALT LAKE NO. 3 LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 4° 54′ E. 6906 ft. thence N. 20° 11′ W. 1500 ft. to Cor. No. 2; thence N. 69° 44′ E. 591.7 ft. to Cor. No. 3; thence S. 20° 11′ E. 1500 ft. to Cor. No. 4; thence S. 69° 44′ W. 591.7 ft. to place of beginning.

SALT LAKE NO. 4 LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 2° 8′ E. 7784.36 ft. thence N. 20° 11′ W. 1485. 22 ft. to Cor. No. 2; thence N. 79° 46′ E. 591.2 ft. to Cor. No. 3; thence S. 20° 14′ E. 1485.5 ft. to Cor. No. 4; thence S. 79° 46′ W. 592.7 ft. to place of beginning.

SALT LAKE NO. 5 LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec.

33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 3° 11′ W. 9961 ft. thence N. 0° 55′ W. 1287.2 ft. to Cor. No. 2; thence N. 89° 5′ E. 600 ft. to Cor. No. 3; thence S. 0° 55′ E. 1287.2 ft. to Cor. No. 4; thence S. 89° 5′ W. 600 ft. to place of beginning.

SALT LAKE LODE.

Beginning at Cor. No. 1 whence the S. E. Cor. Sec. 33 Tn. 31 N. Rn. 43 E. M. D. M. bears S. 0° 16′ E. 9935.96 ft. thence N. 0° 55″ W. 1287.2 ft. to Cor. No. 2; thence N. 89° 5′ E. 600 ft. to Cor. No. 3; thence S. 0° 55′ E. 1287.2 ft. to Cor. No. 4; thence S. 89° 5′ W. 600 ft. to place of beginning. [219]

Total acres of lode claims, 304, 440 acres, exclusive of Sur. No. 37, Virgin Lode, Sur. No. 38 Mary Louise Lode, Sur. No. 39 Mountain Rook Lode, Sur. No. 3842 Magdalene Lode, Sur. No. 1844 East Lake Superior Lode, Sur. No. 1843 Washington Sur. No. 1842 Ethel C. Lode, adjoining claims those above excluded, also Silver King Lode, unsurveyed, William Lode unsurveyed, Tomboy unsurveyed, Iron Chief Annex Lode unsurveyed, Sur. No. 3842 Minnie Lode, were recorded on Jan. 11, 1893, Dec. 1, 1906, April 27, 1907, Dec. 1, 1906, August 7, 1907, August 7, 1907, July 26, 1907, Aug. 27, 1907, Jan. 31, 1908, Feb. 3, 1897, Feb. 19, 1897, Feb. 8, 1897, Feb. 8, 1897, Feb. 8, 1897, June 3, 1913, and Feb. 8, 1897, respectively, in the office of the County Recorder, Lander County, State of Nevada.

JOHN E. ROBBINS,
Register.

First Publication August 1, 1914.

Now, therefore, Murray Scott, Frank J. Healey,

Geo. B. Thatcher and William Forman, citizens of the United States, over the age of twenty-one years, whose residences and postoffice addresses are respectively as follows: Reno, Washoe County, Nevada; Winnemucca, Humboldt County, Nevada; Carson City, Ormsby County, Nevada; and Tonopah, Nye County, Nevada; do on this —— day of September, 1914, hereby enter their protest and adverse claim against the issuance of a patent to said Joseph Ralph for his pretended claim upon the Midas and Evening Star lodes as set forth in his plat and field-notes aforesaid for the following reasons, to wit:

1. That the surface ground and said so-called Midas and Evening Star lodes set forth and contained in said plat and [220] field-notes of said Joseph Ralph, or a great portion thereof, is not the property of said applicant Joseph Ralph; neither is he entitled to hold the same under or by virtue of the local laws, rules and customs of miners in said mining district, the laws of the State of Nevada or of the United States relating to mining claims.

2. Because a great portion of the premises described in said plat and notice of said applicant and claimed by him as the so-called Midas and Evening Star lodes is claimed adversely, and is owned by these protestants and adversants, and is in fact a portion of the Homestake placer as will appear by reference to the abstract of title herewith filed, made a part of this protest and adverse, and marked Exhibit "A."

3. Because these protestants and adversants, and their grantors, have held, occupied and possessed a great portion of the premises set forth and described

by said Joseph Ralph in his plat and notice of the so-called Midas and Evening Star lodes, long prior to the pretended discovery and location of said so-called Midas and Evening Star lodes, such occupation and possession of these protestants and adversants, and their grantors, having been under and by virtue of the full compliance with the local laws, rules and customs of said mining district, the laws of the United States and the State of Nevada pertaining to mineral lands.

4. Because these protestants and adversants and their grantors have held and possessed all that portion of the so-called Midas and Evening Star lodes as represented on the plat of survey made by ——— [221] and colored ———, said plat of said survey being filed herewith, marked Exhibit "B," and made a part of this protest and adverse, and these protestants and adversants are the original discoverers and locators of said Homestake placer by conveyance as shown by said abstract marked Exhibit "A."

5. Because a valid discovery, location and record of said Homestake placer was made by these protestants or their grantors in strict compliance with the local laws, rules and customs and the laws of the State of Nevada and of the United States, and while the same was vacant mineral land of the United States open to occupation, and have kept and possessed the same by and through themselves or grantors actually and continuously from such discovery, location and record.

6. Because no discovery of mineral-bearing rock, lode or ledge in place was ever or at all made by said

applicant Joseph Ralph or his grantors or predecessors in interest on said Midas and Evening Star lodes, and that no annual labor or assessment work of any kind or character was performed by said Joseph Ralph or his predecessors in interest during the year 1912 or for said year at all prior to the entry, discovery and location by these protestants of said Homestake placer.

7. That said Joseph Ralph is now a citizen of the United States, nor has he declared his intention to become such citizen of the United States, and on the contrary these protestants are informed and believe, and upon such information and belief allege that said Joseph Ralph is a citizen of the Kingdom of Great Britain and a subject of his Majesty King George. [222]

8. That said published notice of application for patent hereto attached does not name or designate the Homestake placer as an adjoining and conflicting claim, although said applicant well knew at the time of the making of said application that said Homestake place was an adjoining and conflicting location with said Midas and Evening Star lodes taking in practically and substantially all of the surface of said Homestake placer.

WHEREFORE, these protestants and adversants enter this their protest and adverse claim against the issuance of a patent to said Joseph Ralph upon the so-called Midas and Evening Star lodes.

This adverse is made and executed by Geo. B. Thatcher, one of the owners of said Homestake placer, for himself and on behalf of his co-owners Mur-

ray Scott, Frank J. Healey and William Forman.

GEO. B. THATCHER.

State of Nevada,
County of Ormsby,—ss.

On this —— day of September, 1914, before me ————, a Notary Public in and for said county and state, personally appeared the above named Geo. B. Thatcher, who being first duly sworn, deposes and says: that he is one of the adverse claimants named in the foregoing protest and adverse claim above subscribed by him; that he has read the same and knows the contents thereof; that the same is true in substance and in fact, and that said claim is made in good faith to protect his better and prior title and for himself and on behalf of his co-owners named in said adverse.

————————. [223]

Subscribed and sworn to before me this —— day of September, 1914.

————————,
Notary Public.

My commission expires ———.

TRACT A.

BOUNDARIES OF CONFLICT OF THE HOMESTAKE PLACER WITH SUR. NO. 4175, SALT LAKE NO. 3.

Feet.

Beginning at Cor. No. 1, Sur. No. 4175, Salt Lake No. 3.

Whence the S. E. Cor. of Sec. 33, Tn. 31 N., Rn. 43 E., M. D. B. and M. bears S–4–54′–E. 6906 ft:

Thence N–20–11′–W.

272.57 to a point.

Thence S–68–45′–E.

411.21 to a point.

Thence S–69–44′–W.

308.29 to the point of beginning.

Containing .97 acres.

All bearings expressed from the true meridian.

[224]

TRACT B.

BOUNDARIES OF ADVERSE OF THE HOMESTAKE PLACER WITH SUR. NO. 4175, MIDAS LODE.

Feet.

Beginning at Cor. No. 2, Sur. No. 4175, Midas.

Identical with Cor. No. 4, Sur. No. 4175, Evening Star.

Whence the S. E. Cor. of Sec. 33, Tn. 31 N., Rn. 43 E., M. B. and M. bears S–4–54′–E. 6906 ft.

Thence N–69–44′–E.

308.29 to a point.

Thence S–68–45′–E.

169.44 to Cor. No. 4, Homestake Placer.

Thence S–21–15′–W.

666.21 to point on line 1–2, Sur. No. 4175, Midas, at S–19–40′–E., 611.17 ft. from Cor. No. 2.

Thence N–19–40′–W.

611.17 to Cor. No. 2, Sur. No. 4175, Midas, the place of beginning.

Containing 3.457 acres.

All bearings expressed from the true meridian.

[225]

TRACT C.

BOUNDARIES OF ADVERSE OF THE HOMESTAKE PLACER WITH SUR. NO. 4175, EVENING STAR LODE.

Feet.

Beginning at Cor. No. 1, Homestake Placer.

Whence the S. E. Cor. of Sec. 33, Tn. 31 N., Rn. 43 E., M. D. B. and M. bears S–5–07′–20″–E. 5950.8 ft.

Cor. No. 4, Sur. No. 4175, Evening Star, bears N–3–31′–W. 955.53 ft.

Thence N–68–45′–W.

442.22 to a point on line 2–3 Sur. No. 4175, Evening Star Lode, at S–69–44′–W. 336.60 ft. from Cor. No. 3.

Thence 19–40′–W.

237.09 to a point.

Thence 21–15′–E.

513.90 to a point on line 3–4, Sur. No. 4175, Evening Star Lode, at S–69–44′–W. 336.60 ft. from Cor. No. 3.

Thence N–69–44′–E.

263.40 to Cor. No. 4, Sur. No. 4175, Evening Star Lode.

Thence S–19–40′–E.

611.17 to a point.

Thence S–29–15′–W.

405.79 to Cor. No. 1, Homestake Placer, the point of beginning.

Containing 9.065 acres.

All bearings expressed from the true meridian.

[226]

DESCRIPTION OF THE HOMESTAKE PLACER CLAIM, SITUATE IN THE COPPER CANYON MINING DISTRICT, HUMBOLDT COUNTY, NEVADA.

Feet.

Beginning at Cor. No. 1.

Whence the S. E. Cor. of Sec. 33, Tn. 31 N., Rn. 43 E., M. D. B. and M. bears S–5–07′–20″ E 5950.8 ft.

Cor. No. 1, Sur. No. 4175, Salt Lake No. 3, bears N–3–31′–W. 955.53 ft.

Thence N–68–45′–W.

442.22 Intersect line 2–3, Sur. No. 4175, Evening Star, at 621.9 ft. from Cor. No. 3.

597.50 to Cor. No. 2, Homestake Placer.

Thence N–21–15′–E.

179.16 Intersect line 2–3, Sur. No. 4175, Evening Star, at 384.81 ft. from Cor. No. 3.

693.06 Intersect line 3–4, Sur. No. 4175, Evening Star, at 336.60 ft. from Cor. No. 3.

1072.00 to Cor. No. 3.

Thence S–68–45′–E.

16.85 Intersect line 1–2, Sur. No. 4175, Salt Lake No. 3, at N–20–11′–W. 272.57 ft. from Cor. No. 1.

428.06 Intersect line 4–1, Sur. No. 4175, Salt Lake No. 3, at N–69–44′ E. 308.29 ft. from Cor. No. 1.

597.50 to Cor. No. 4.

Thence 21–15′ W.

666.21 Intersect line 1–2, Sur. No. 4175, Midas, at S–19–40′ E. 611.17 ft. from Cor. No. 2.

1072.00 to Cor. No. 1, the place of beginning.

Containing 14.704 acres.

All bearings expressed from the true meridian.

Plat attached. [227]

Mr. FORMAN.—Q. Mr. Thatcher, you were the attorney who prepared these papers and filed them?

A. Yes.

Q. Have you the receipts from the Register and Receiver of the Land Office? A. Yes.

Q. Are the papers you hold in your hand such receipts?

A. Yes, the receipts for the adverses.

The COURT.—You have testified that these papers were actually filed?

Mr. FORMAN.—Yes, sir, and these are the receipts showing that they were filed. We now desire to offer in evidence these receipts.

The COURT.—Is there any objection to the receipts?

Mr. ELLIS.—None, except the objection preceding.

The COURT.—The receipts will be admitted, and they will be subject to the same objection which was made to the adverse; the ruling will be the same, and you may have the same exception.

Mr. FORMAN.—Do you desire to cross-examine?

Mr. ELLIS.—No.

(The receipts are marked Plaintiffs' Exhibits "N" and "O" and read as follows:) [228]

**Plaintiffs' Exhibit "N"—Receipt.**

RECEIPT.

No. 1392521.

U. S. Land Office, Elko Nevada,
September 24, 1914.

RECEIVED of Geo. B. Thatcher, et al., Carson City, Nevada, Ten ..... 00/100 Dollars, in connection with Adverse mineral claim against 01544, Serial No. 01686.

Fees R. & R.....10

Total.....10

ASHLEY G. DAWLEY,
Receiver of Public Moneys,
By FRED R. BESSY,
Clerk.

NOTICE OF FILING OF ADVERSE CLAIM AGAINST MINERAL APPLICATION.

DEPARTMENT OF THE INTERIOR
United States Land Office,
Elko, Nevada, September 24, 1914.

Messrs. Noah Faubert, Geo. B. Thatcher and Guy Davis,
Battle Mountain, Nevada.

Sirs:

You will please take notice that on this twenty-fourth day of September, 1914, there was filed in this office by Geo. B. Thatcher, Noah Faubert and Guy Davis as claimants of the Guy Davis placer mining claim adverse claim against Application for Mineral Patent No. 01544, Survey No. 4175 of Joseph Ralph

for the John John, and fifteen other lode mining claims in unsubdivided Township 31 North, Range 43 East, Mount Diablo Meridian.

The parties who filed the adverse claim will be required, within 30 days from the date of such filing, to commence proceedings in a court of competent jurisdiction to determine the [229] question of right of possession, and to prosecute the same with reasonable diligence to final judgment; should such adverse claimants fail to do so, the adverse claim will be considered waived and the application for patent be allowed to proceed on its merits.

JOHN E. ROBBINS,
Register.

_____,
Receiver.

FRB. [230]

**Plaintiffs' Exhibit "O"—Receipt.**

RECEIPT.

No. 1392522.

U. S. Land Office, Elko, Nevada,
September 24, 1914.

RECEIVED of Geo. B. Thatcher, et al., Carson City, Nevada, Ten ..... 00/100 Dollars, in connection with adverse mineral claim against 01544, Serial No. 01687.

Fees R. & R.....10

Total.....10

ASHLEY G. DAWLEY,
Receiver of Public Moneys.
By FRED R. BESSY,
Clerk.

NOTICE OF FILING OF ADVERSE CLAIM AGAINST MINERAL APPLICATION.

DEPARTMENT OF THE INTERIOR.

United States Land Office.

Elko, Nevada, September 24, 1914.

Messrs. Geo. B. Thatcher, et al.,

Battle Mountain, Nevada.

Sirs:

You will please take notice that on this twenty-fourth day of September, 1914, there was filed in this office by Geo. B. Thatcher, Murray Scott, Frank J. Healey and William Forman, as claimants of the Homestake placer mining claim adverse claim against application for mineral patent No. 01544, Survey No. 4175 of Joseph Ralph for the John John, and fifteen other lode mining claims in the unsubdivided Township 31 North, Range 43 [231] East, Mount Diablo Meridian.

The parties who filed the adverse claim will be required, within 30 days from the date of such filing, to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment; should such adverse claimants fail to do so, the adverse claim will be considered waived and the application for patent be allowed to proceed on its merits.

JOHN E. ROBBINS,

Register.

_____,

Receiver.

FRB. [232]

Mr. THATCHER.—If the Court please, I desire to offer in evidence the complaint in the certified copy of the record as it comes up on removal, together with the endorsements, in the case of Guy Davis, Noah Faubert and George B. Thatcher versus Joseph Ralph, for the purpose of showing the date of the filing of the suit in support of the adverse.

The COURT.—It will be admitted.

(The complaint is marked Plaintiff's Exhibit "P.")

Mr. THATCHER.—I offer in evidence the complaint in the case of J. J. Healey, Murray Scott, William Forman and George B. Thatcher versus Joseph Ralph, this being the certified copy received upon removal, filed September 30, 1914, and particularly with reference to the endorsements thereon as to filing.

(The complaint is admitted in evidence, and marked Plaintiff's Exhibit "2.")

Mr. THATCHER.—If the Court please, I desire to offer in evidence the answers in both cases.

The COURT.—If there is no objection they will be admitted.

Mr. ELLIS.—No objection.

(The answer in each case is admitted and marked, respectively, Plaintiffs' Exhibit "R" and "S.")

Mr. THATCHER.—Mr. Springmeyer, won't you admit that the suits are filed?

Mr. SPRINGMEYER.—Certainly.

Mr. THATCHER.—Within the time required?

Mr. SPRINGMEYER.—Certainly. I think the Court takes judicial notice of the filing of the suits.

Mr. THATCHER.—You admit the suit was commenced within the thirty days as required by the statute?

Mr. SPRINGMEYER.—We admit the papers were filed within the [233] thirty days, but we claim you must prove that the fees were paid within that time.

Mr. THATCHER.—I will call Mr. Edwards.

**Testimony of T. J. Edwards, for Plaintiffs.**

Mr. T. J. EDWARDS, called as a witness by plaintiffs, after being sworn, testified as follows:

Mr. THATCHER.—(Q.) Were the fees for the filing of the complaint in this action paid to you as clerk, Mr. Edwards? A. Yes, sir.

Mr. THATCHER.—That is all.

Mr. SPRINGMEYER.—(Q.) You don't know whether any fees were paid to the county clerk of Lander County, from which this case was removed, do you? A. I know nothing about that. [234]

Mr. FORMAN.—I want to show that summons was issued.

Mr. SPRINGMEYER.—We will stipulate that is a fact.

Mr. FORMAN.—The day the complaint was filed that a summons was issued on that date and placed in the hands of the proper officer for service.

Mr. SPRINGMEYER.—Yes, of course that is the fact, and the Court will take judicial notice of it.

Mr. THATCHER.—I desire to offer in evidence an agreement and deed from Guy Davis, Noah Faubert and D. S. Van Orman, to George B. Thatcher

(Testimony of F. J. Edwards.)

and William Forman, for a conveyance of a one-tenth interest in certain of the mining claims.

Mr. ELLIS.—No objection to it.

Mr. SPRINGMEYER.—Are those original deeds?

Mr. THATCHER.—They are all originals, yes, sir; they were made in duplicate; this is an exact duplicate copy; this is acknowledged, sworn to and signed.

Mr. SPRINGMEYER.—I think you ought to prove the signatures, unless they are certified copies.

Mr. THATCHER.—This is acknowledged, that proves the signatures.

Mr. SPRINGMEYER.—I do not understand the law to be that way; unless they are certified copies of official records, signatures must be proven. I would not object on that ground, but the reason is that according to our certified copy of the deeds there is not a complete chain of title, and we want to have the opportunity of showing there were other deeds of the ones they offer in evidence, and we cannot do it if they simply put the deeds in evidence; otherwise we would not make such an objection.

Mr. THATCHER.—If the Court please, this is acknowledged, and I understand the weight of the notarial certificate is proof [235] of the instrument.

The COURT.—It proves itself, I understand.

Mr. SPRINGMEYER.—We object to the introduction of it on the ground it is not sufficiently proven, and to all the deeds we will just make one blanket objection on the same ground.

(Testimony of F. J. Edwards.)

The COURT.—Very well.

(The Agreement and Deed is admitted in evidence, marked Plaintiffs' Exhibit "T" and reads as follows:)

**Plaintiffs' Exhibit "T"—Agreement and Deed from Davis, Faubert & Van Orman to Thatcher & Forman.**

"This AGREEMENT made and entered into this 11th day of November, 1913, by and between Guy Davis, Noah Faubert and D. S. Van Orman of Nevada, parties of the first part, and Geo. B. Thatcher and William Forman, of Nevada, parties of the second part, WITNESSETH:

That the parties of the first part, for and in consideration of the services heretofore and hereafter to be rendered as herein more specifically set forth, do hereby employ the parties of the second part as attorneys and counsellors at law to represent and defend certain actions now pending in the United States District Court, in and for the District of Nevada, wherein William Lamont as Liquidator of the Glasgow and Western Exploration Company, Ltd., is plaintiff, and wherein Guy Davis and Noah Faubert are parties defendant, wherein the title and right to possession of the Guy Davis placer in the Copper Canyon or Battle Mountain Mining District, Lander County, State of Nevada, is involved, and any other liquidation or suits that may be commenced by William Lamont as Liquidator of the Glasgow & Western Exploration Company, Ltd., its successors and assigns against the parties of the first part hereto, and

hereby promise and agree to pay to said parties of the second part for services already rendered and for such services as hereafter may be rendered in connection therewith ten per cent (10%) of the net returns [236] of all ores or placer gold that may hereafter be mined or extracted from said Guy Davis placer.

The word 'net' is hereby defined to be the gross value of the ores or placer gold less the reasonable cost of extraction, transportation and sale.

In consideration thereof the parties of the second party agree to defend all of said actions now pending against said parties in the United States Court for the District of Nevada aforesaid and in any courts of the State of Nevada, in which any action may be commenced against the parties of the first part by William Lamont as Liquidator of the Glasgow and Western Exploration Company, Ltd., its successors and assigns, concerning the title or right to the possession of the Guy Davis Placer.

IT IS UNDERSTOOD, STIPULATED AND AGREED that this agreement is a conveyance of an undivided one-tenth (1/10) nonassessable interest in said Guy Davis placer.

IT IS FURTHER STIPULATED AND AGREED by and between the parties hereto that the parties of the second part may and hereby do appoint with power of revocation or substitution L. O. Ray as their agent to at all times represent them and their interest in the said Guy Davis placer or the proceeds thereof; it being understood and agreed that all bills

and costs of extraction, reduction and sale shall be O.K.'d by L. O. Ray.

IT IS FURTHER UNDERSTOOD AND AGREED that said L. O. Ray shall be paid for his services at the rate of —— dollars per month, which amount shall be paid and included in the cost of extraction, reduction and sale.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written. [237]

GUY C. DAVIS. (Seal)
NOAH FAUBERT. (Seal)
D. S. VAN ORMAN. (Seal)
GEO. B. THATCHER. (Seal)
WILLIAM FORMAN. (Seal)

State of Nevada,
County of Ormsby,—ss.

On this 11th day of November, A. D. 1913, before me, John J. Mullin, a Notary Public in and for the County of Ormsby, State of Nevada, personally appeared Noah Faubert, known to me to be one of the persons described in and whose name is subscribed to the foregoing instrument as a party thereto; who acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial Seal the day and year in this certificate first above written.

[Seal] JOHN J. MULLIN,
Notary Public.

State of Nevada,
County of Lander,—ss.

On this 17th day of November, A. D. one thousand nine hundred and thirteen personally appeared before me E. T. George, a Notary Public in and for said County of Lander, Guy C. Davis and D. S. Van Orman, known to me to be the persons described in and who executed the foregoing instrument, who acknowledged to me that they executed the same, freely and voluntarily, and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official Seal at my office in the County of Lander, the day and year in this certificate first above written.

[Seal] E. T. GEORGE,
Notary Public in and for the County of Lander, State of Nevada.

My commission expires July 3d, 1917." [238]

**Testimony of Emmett D. Boyle, for Plaintiffs (Recalled).**

Mr. EMMETT D. BOYLE, recalled for further examination, testified as follows:

Mr. THATCHER.—(Q.) Have you reviewed your testimony? A. Yes.

Q. From that testimony did you make any memoranda? A. I did.

Q. From that memoranda can you tell the jury where you took those assays from? A. Yes.

Q. Will you do so?

(Testimony of Emmett D. Boyle.)

A. Sample number 7 was taken from a small seam in the lowest excavation of the mill. Sample number 2 was taken from what was designated on your map as "Open Cut A," which I take to be the cut marked 20.

Q. On what claim?

A. On the Evening Star. Sample number 2 was taken from the entrance to the cut, to a point six feet in along the side of the cut. Sample number 3 was taken along the side of the cut, for a distance from six to twelve feet, into the entrance. Sample number four was taken twelve to eighteen feet in the cut; sample five, eighteen to twenty-six feet in; and sample number six was taken at the face. Sample number nine was taken from the opening marked on this map as number 24, on the Evening Star.

Q. Do you remember what that was, was that the white dump?

A. I described it as a cut within a shattered formation of salicious rock, sharply broken, showing ochre stains. Sample number ten was taken in the tunnel marked number 22, on the Midas claim, and it was taken from a seam which I have noted as being from two inches to eighteen inches wide.

Q. Were those the only samples taken?

A. Those were the only samples taken, that is, for assays.

Q. You had those assayed for gold, silver, and copper?

A. Yes, I had them assayed for gold, silver, and copper. [239]

(Testimony of Emmett D. Boyle.)

Q. By Mr. Woodbury? A. Yes, sir.

Q. I understand counsel will not require us to call Mr. Woodbury. You delivered the samples to Mr. Woodbury, and these are the returns that he gave you?

A. I delivered the samples in person to Mr. Woodbury, and he returned the reports, which I take to be the returns you have.

Mr. SPRINGMEYER.—We have no objection to the introduction. The assayer delivered these assay certificates to you personally, did he, Governor Boyle? A. Yes.

Mr. THATCHER.—I offer them in evidence, if the Court please.

Mr. SPRINGMEYER.—We have no objection.

The COURT.—Very well, they will be admitted.

(The assay returns are read to the jury by Mr. Thatcher.)

Mr. THATCHER.—(Q.) Let me ask you if these are the assays made for copper?

A. Yes, as I remember it, Mr. Woodbury assayed these samples for gold and silver first, and then I asked him to make an assay for copper, from the same pulp.

(The assay returns are marked Plaintiffs' Exhibits "U" and "V," and read as follows:)

**Plaintiffs' Exhibit "U"—Ore Assay Report.**

"ORE ASSAY REPORT OF CARSON ASSAY OFFICE,

Carson City, Nevada.

The 8 ore Samples left for assay by E. Boyle at the Carson Assay Office Dec. 2, 1913, result as follows:

| Assay No. | Kind of | Depositor's Mark. | Gold Dollars. | Gold Cts. | Silver Dollars. | Silver Cts. | Val. Per Ton Dollars. | Val. Per Ton Cts. |
|---|---|---|---|---|---|---|---|---|
| 271 | Sample | #2 | None | | None | | None | |
| 272 | " | 3 | " | | " | | " | |
| 273 | " | 4 | " | | " | | " | |
| 274 | " | 5 | " | | " | | " | |
| 275 | " | 6 | " | | " | | " | |

Charges $8.00.

W. O. WOODBURY,
Assayer. [240]

ORE ASSAY REPORT OF CARSON ASSAY OFFICE,

Carson City, Nevada.

The 8 ore samples left for assay by E. Boyle at the Carson Assay Office Dec. 2, 1913, result as follows:

| Assay No. | Kind of Assay. | Depositors Mark. | Gold Dollars. | Gold Cts. | Silver Dollars. | Silver Cts. | Val. Per Ton Dollars. | Val. Per Ton Cts. |
|---|---|---|---|---|---|---|---|---|
| 276 | Sample | #7 | None | | None | | None | |
| 277 | " | #9 | 41 | | 56 | | 97 | |
| 278 | " | 10 | 82 | | 64 | | 1.46 | |

Charge $8.00 Silver 60¢

W. C. WOODBURY,
Assayer."

**Plaintiffs' Exhibit "V"—Ore Assay Report.**

"ORE ASSAY REPORT OF CARSON ASSAY OFFICE,

Carson City, Nevada.

The 8 ore samples left for Assay by E. Boyle at the Carson Assay Office Dec. 2, 1913, result as follows:

| Assay No. | Kind of Assay. | Depositor's Mark. |
|---|---|---|
| 271 | Copper | Sample No. 2 0% Cu. |
| 272 | " | " " 3 0% " |
| 273 | " | " " 4 0% " |
| 274 | " | " " 5 0% " |
| 275 | " | " " 6 0% " |

Charges $4.00.

W. O. WOODBURY,
Assayer.

ORE ASSAY REPORT OF CARSON ASSAY OFFICE,

Carson City, Nevada.

The 8 Ore Samples left for Assay by E. Boyle at the Carson Assay Office Dec. 2, 1913, result as follows:

| Assay No. | Kind of Assay. | Depositor's Mark. |
|---|---|---|
| 276 | Copper | Sample No. 7 trace % Cu. |
| 277 | " | " No. 9 0 % " |
| 278 | " | " No. 10 0 % " |

Charges $4.00.

W. O. WOODBURY,
Assayer." [241]

(Testimony of Emmett D. Boyle.)

The COURT.—Do you desire to ask any questions, Mr. Springmeyer?

Mr. SPRINGMEYER.—I just want to ask one question.

Q. As I understand, you took some samples you didn't have assayed, is that correct?

A. I took two; one of them was the sample of the country rock which I took to the University, and the other was a sample from that shaft on the Yellow Jacket, which was submitted here in the courtroom, and wasn't assayed—the sample was left here.

Q. That was from the place marked "Discovery Yellow Jacket" on this map? A. Yes.

Mr. THATCHER.—May I interrupt you a minute; I might put Governor Boyle in a bad light by forgetting to ask him something.

Q. You took two other assays besides that, didn't you, and presented the certificate here.

A. No, sir, not that I recall, two other samples, I testified to all of the samples that I took for assay, but in reading the assay report you overlooked the second sheets, I believe.

Mr. THATCHER.—Oh, yes, I overlooked the second sheet altogether, in both of them; I just read the first sheet.

(The second sheet of each assay return is read to the jury by counsel.)

Mr. THATCHER.—I have read them all now, have I not, Mr. Boyle? A. I think so.

Mr. SPRINGMEYER.—No further questions, Governor.

(Testimony of Emmett D. Boyle.)

Mr. THATCHER.—I offer in evidence a copy of a deed from Noah Faubert, party of the first part, to George A. Cole, Ed. Malley and Gilbert Ross, parties of the second party, dated March 20th, 1915— This is only a copy. [242]

Mr. ELLIS.—Which claim does that affect?

Mr. THATCHER.—This is the the Guy Davis.

Mr. ELLIS.—The defendant Ralph in the case of Guy Davis and others, against Ralph, objects to the admission in evidence of the deed or copy offered, for the reason that the original, of which this purports to be a copy, does not purport to have attached to it any United States Internal revenue stamps, pursuant to the act which became effective December 1, 1914, it having been executed since that date.

Mr. THATCHER.—It had before it was recorded, I am sure, but I will withdraw this temporarily.

I offer in evidence a deed from Noah Faubert and D. S. Van Orman to George B. Thatcher, for a one-half interest in the Guy Davis Placer, dated June 24, 1914.

Mr. ELLIS.—Does it purport to have been recorded?

Mr. THATCHER.—Yes, it had been recorded.

Mr. ELLIS.—No objection.

(The deed is admitted in evidence, marked Plaintiffs' Exhibit "W," and reads as follows:

**Plaintiffs' Exhibit "W"—Deed from Faubert & Van Orman to Geo. B. Thatcher.**

"QUITCLAIM MINING DEED.

THIS INDENTURE, Made this twenty-fourth

day of June in the year of our Lord, A. D., One thousand Nine Hundred and fourteen between Noah Faubert and D. S. Van Orman, both of Battle Mountain, Nevada, the parties of the first part, and Geo. B. Thatcher, the party of the second part: WITNESSETH,

That the said parties of the first part, for and in consideration of the sum of Ten no/100 Dollars, Gold Coin of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, and forever *quite claimed,* and by these presents do hereby grant, bargain, sell, remise, release, and forever [243] quitclaim, unto the said party of the second part, and to his heirs and assigns, an undivided one-half interest in all their right, title and interest in and to the 'Guy Davis' placer claim situate Copper Canyon, Battle Mountain Mining District, Lander County, State of Nevada, it being the intention of the parties hereto to convey an undivided one-third interest in said claim, of they own 2/3 of said claim, if not this is an absolute conveyance of an undivided one fourth (¼) interest in said 'Guy Davis' Placer aforesaid. The title conveyed hereby is subject to an option to Wm. Doyle, et al., and the payments due thereunder are hereby assigned to the party of the second part if they shall be paid by said Doyle et al.

TOGETHER with all the dips, spurs and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereunto incident, ap-

pendant and appurtenant, or therewith usually had and enjoyed; and, also, all and singular tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the rents, issues and profits thereof; and, also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part, of, in, or to the said premises, and every part and parcel thereto, with the appurtenances.

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written. [244]

NOAH FAUBERT. (Seal)
D. S. VAN ORMAN. (Seal)

Signed, sealed and delivered in Presence of

State of Nevada,
County of Washoe,—ss.

On this 24th day of June, A. D. one thousand nine hundred and fourteen personally appeared before me, a Notary Public in and for the County of Ormsby, Noah Faubert and D. S. Van Orman proved to me to be the persons described in and who executed the foregoing instrument, who acknowledged to me that they executed the same, freely and voluntarily, and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and fixed my official Seal at my office in the

County of Washoe, the day and year in this certificate first above written.

[Seal] JAMES D. FINCH,
Notary Public in and for the County of Ormsby, State of Nevada.

[Endorsed]: Quitclaim Mining Deed. Noah Faubert & D. S. Van Orman to Geo. B. Thatcher. Filed for record at request of Geo. B. Thatcher July 22d, A. D. 19— at 25 min. past 4 o'clock P. M. and recorded in Book 53 of Deeds page 369, Lander County Records. Bert Acree, Recorder. File No. 4149."

Mr. SPRINGMEYER.—We have no objection to that deed other than the blanket objection made to all of these.

Mr. THATCHER.—I offer in evidence a deed from J. J. Healey to George B. Thatcher and William Forman, dated the 11th day of November, 1913, for a one-tenth interest in the Homestake Placer.

Mr. SPRINGMEYER.—We would like the opportunity of examining Mr. Healey with regard to that deed, and with regard to his title at the time he conveyed to you. May we examine Mr. Healey at this time with regard to his title, before the deed is admitted in evidence? [245]

The COURT.—Have you any objection?

Mr. THATCHER.—No, I have no objection. I am going to show that Mr. Healey had conveyed his interest.

Mr. ELLIS.—If you will make that showing.

Mr. THATCHER.—I will show that he has.

Mr. SPRINGMEYER.—If Mr. Thatcher will put

that deed in evidence, there will be no need of calling Mr. Healey.

Mr. THATCHER.—I will put it in.

(The deed offered is admitted in evidence, marked Plaintiffs' Exhibit "X," and reads as follows:)

**Plaintiffs' Exhibit "X"—Deed from Healey & Scott to Thatcher & Forman.**

THIS AGREEMENT MADE and entered into this 11th day of November, 1913, by and between J. J. Healey and Murray Scott, of Lander County, Nevada, parties of the first part, and Geo. B. Thatcher and William Forman, of Nevada, parties of the second part, WITNESSETH:

That the parties of the first part, for and in consideration of the services heretofore and hereafter to be rendered as herein more specifically set forth, do hereby employ the parties of the second part as attorneys and counsellors at law to represent and defend certain actions now pending in the United States District Court, in and for the District of Nevada, wherein William Lamont as Liquidator of the Glasgow and Western Exploration Company, Ltd., is plaintiff, and wherein J. J. Healey and Murray Scott are parties defendant, wherein the title and right to possession of the Homestake placer in the Copper Canyon or Battle Mountain Mining District, Lander County, State of Nevada, is involved, and any other liquidation or suits that may be commenced by William Lamont as Liquidator of the Glasgow and Western Exploration Company, Ltd., its successors and assigns, against the parties of the first part hereto, and hereby [246] promise and

agree to pay to said parties of the second part for services already rendered and for such services as hereafter may be rendered in connection therewith ten per cent (10%) of the net returns of all ores or placer gold that may hereafter be mined or extracted from said Homestake placer.

The word "net" is hereby defined to be the gross value of the ores or placer gold less the reasonable cost of extraction, transportation and sale.

In consideration thereof the parties of the second part agree to defend all of said actions now pending against said parties in the United States Court for the District of Nevada aforesaid and in any courts of the State of Nevada, in which any action may be commenced against the parties of the first part by William Lamont as Liquidator of the Glasgow and Western Exploration Company, Ltd., its successors and assigns, concerning the title or right to the possession of the Homestake placer.

IT IS UNDERSTOOD, STIPULATED AND AGREED that this agreement is a conveyance of an undivided one-tenth (1/10) nonassessable interest in said Homestake placer.

IT IS FURTHER STIPULATED AND AGREED by and between the parties hereto that the parties of the second part may and hereby do appoint with full power of revocation or substitution L. O. Ray as their agent to all times represent them and their interest in the said Homestake placer or the proceeds thereof; it being understood and agreed that all bills and costs of extraction, reduction and sale shall be O. K.'d by L. O. Ray.

IT IS FURTHER UNDERSTOOD AND AGREED that said L. O. Ray shall be paid for his services at the rate of —— Dollars per month, which amount shall be paid and be included in the cost of extraction, reduction and sale.

IN WITNESS WHEREOF, the parties hereto have set their hands [247] and seals the day and year first above written.

JOHN J. HEALEY. (Seal)
MURRAY SCOTT. (Seal)
GEO. B. THATCHER. (Seal)
WILLIAM FORMAN. (Seal)

State of Nevada,
County of Ormsby,—ss.

On this 11th day of November, 1913, before me, John J. Mullin, a Notary Public in and for the County of Ormsby, State of Nevada, personally appeared Noah Faubert, known to me to be one of the persons described in and whose name is subscribed to the foregoing instrument as a party thereto; who acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.

[Seal] JOHN J. MULLIN,
Notary Public.

State of Nevada,
County of Lander,—ss.

On this 17th day of November, A. D. one thousand nine hundred and thirteen personally appeared be-

fore me, E. T. George, a Notary Public in and for the said County of Lander, John J. Healey and Murray Scott, known to me to be the persons described in and who executed the foregoing instrument, who acknowledged to me that they executed the same, freely and voluntarily, and for the uses and purposes therein mentioned.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my Official Seal at my office in the County of Lander, the day and year in this certificate first above written.

[Seal] E. T. GEORGE,
Notary Public in and for the County of Lander, State of Nevada.

My commission expires July 3d, 1917. [248]

[Endorsed]: J. J. Healey et al., to Geo. B. Thatcher. Filed for Record at the request of Geo. B. Thatcher, September 11, A. D. 1914, 4:10 P. M., and recorded at page 18 of Book 5 of Miscellaneous Records of Lander County, Nevada. Bert Acree, County Recorder. File No. 4231."

Mr. THATCHER.—I offer in evidence a deed from the Sheriff of the County of Lander to Frank L. Reber, made by reason of execution against Murray Scott's interest, made first to Verdi Lumber Company, and through an assignment of the certificate of sale, to Frank L. Reber.

Mr. ELLIS.—No objection to that one.

(The deed is admitted in evidence, marked Plaintiffs' Exhibit "Y," and reads as follows:)

**Plaintiffs' Exhibit "Y"—Deed from Bar Francis to Frank L. Reber.**

THIS INDENTURE, made this 26th day of January, A. D. 1915, between Bar Francis, Sheriff of the County of Lander, of the first part, and the Verdi Lumber Company, of the County of Humboldt, and State of Nevada, of the second part:

WHEREAS, by virtue of a writ of execution issued out of and under the seal of, the Six Judicial District Court of the County of Humboldt, State of Nevada, attested the 29th day of May, A. D. 1914, upon a judgment recovered in said court on the 26th day of May, A. D. 1914, in favor of the Verdi Lumber Company and against Murray Scott, to the said Sheriff directed and delivered, commanding him that of the personal property of the said judgment debtor in his County, he should cause to be made certain moneys in the said writ specified, and if sufficient personal property of the said judgment debtor could not be found, that then he should cause the amount of said judgment to be made out of the lands, tenements and real property belonging to him on the 26th day of May, A. D. 1914, or at any time afterwards;

AND, WHEREAS, because sufficient personal property of the [249] said judgment debtor could not be found, whereof he, the said sheriff, could cause to be made the moneys specified in said writ, he, the said Sheriff, did in obedience to said command, levy on, take and seize all the estate, right, title and interest which the said judgment debtor so

had of, in and to the lands, tenements, real estate and premises hereinafter particularly set forth and described, with the appurtenances, and did, on the 6th day of July, A. D. 1914, sell the said premises, at public auction, at the Courthouse door, in the Town of Austin, County of Lander, between the hours of nine in the morning and five in the afternoon of that day, namely: at twelve o'clock noon, after first having given notice of the time and place of such sale, by advertising the same according to law; at which sale the said premises were struck off and sold to the Verdi Lumber Company, for the sum of $310.76, United States Gold Coin, the said Verdi Lumber Company, being the highest bidder, and that being the highest sum bid, and the whole price paid for same;

Revenue Stamps

AND, WHEREAS, the said Sheriff, after receiving from said purchaser the said sum of money so bid as aforesaid, gave to him such certificate as is by law directed to be given;

AND, WHEREAS, six months after such sale have expired without any redemption of the said premises having been made;

AND, WHEREAS, the said Verdi Lumber Company, did on the 5th day of January, A. D. 1915, sell and assign all its right, title and interest in said property to Frank L. Reber of the County of Humboldt, State of Nevada;

NOW THIS INDENTURE WITNESSETH, that I, Bar Francis, the Sheriff aforesaid, and party hereto of the first part, by virtue of said writ, and

in pursuance of the statute in such case made and provided, for and in consideration of the sum of money above mentioned, to him in hand paid, as aforesaid, by the said [250] party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, conveyed and confirmed, and by these presents doth grant, bargain, sell, convey and confirm unto the said Frank L. Reber, his heirs and assigns, all the estate, right, title and interest of the said Murray Scott, which he had on the said 26th day of May, A. D. 1914, or at any time afterwards, or now of, in and to all the following described property, to wit: All the right, title, claim and interest of the said Murray Scott in and to that certain mining claim situated in Battle Mountain Mining District, County of Lander, State of Nevada, and known, called and designated as Homestake Placer Mining Claim, said mining claim being more particularly described in the Certificate of Location recorded in the office of the County Recorder of Lander County, Nevada, in book 8 at page 57, Duplicate Mining Notices, records of Lander County, Nevada, to which records, books and pages reference is hereby made, together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, to have and to hold the said above-mentioned and described property, with the appurtenances, unto the said Frank L. Reber, heirs and assigns forever, as fully and absolutely as he, the Sheriff aforesaid, can, may, or ought to, by virtue of the said writ, and of the statute in

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such case made and provided, grant, bargain, sell, release, assign, convey and confirm the same.

IN WITNESS WHEREOF, the said Sheriff, the party of the first part to these presents, hath hereunto set his hand and seal the day and year first above written.

BAR FRANCIS,
Sheriff of Lander County, Nevada. [251]

State of Nevada,
County of Lander,—ss.

On this 26th day of Jan. in the year one thousand nine hundred and fifteen, before me, A. J. Maestretti, a Notary Public, in and for the County of Lander, personally appeared Bar Francis, Sheriff of Lander Co., known to me to be the same person whose name is subscribed to the within instrument, and he duly acknowledged to me that he executed the same, freely, and voluntarily, and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, at my office in the County of Lander, the day and year in this Certificate first above written.

[Seal] A. J. MAESTRETTI,
Notary Public in and for the County of Lander, State of Nevada.

[Endorsed]: Filed for record at the request of First National Bank of Winnemucca February 26, A. D. 1915, at 4:45 P. M., and recorded at page 469 of Book 53 of Deeds Records of Lander County, Nevada. Bert Acree, County Recorder. File No. 4540.

Mr. THATCHER.—I offer in evidence an assignment of sheriff's certificate of sale from the Verdi Lumber Company to Frank L. Reber of the same interest, to wit, the Murray Scott interest.

Mr. ELLIS.—The defendant in the case of Davis and others against Ralph, involving the Guy Davis claim, objects to the introduction in evidence of the paper just offered, on the ground there are not the necessary revenue stamps attached and cancelled as required by the act becoming effective December 1, 1914.

Mr. THATCHER.—The assignment has; the certificate from the Sheriff has not.

The COURT.—Do you still object?

Mr. ELLIS.—Yes.

(Discussion by counsel.)

The COURT.—Well, I will look into that later. [252]

Mr. THATCHER.—I now offer in evidence a deed from John J. Healey to Lillian V. Healey, dated the 4th day of May, 1914, and recorded.

Mr. ELLIS.—No objection.

(The deed is admitted in evidence, and marked Plaintiffs' Exhibit "Z" and reads as follows:)

**Plaintiffs' Exhibit "Z"—Deed from John J. Healey to Lillian V. Healey.**

THIS INDENTURE, Made the Fourth day of May, one thousand nine hundred and fourteen BETWEEN John J. Healey the party of the first part, and Lilian V. Healey, the party of the second part WITNESSETH: That the First party, in consideration of the sum of "One Hundred Dollars,

Gold Coin of the United States of America to me in hand paid, by the second party, the receipt whereof is hereby acknowledged, by these presents QUIT-CLAIMS, unto the second party, and to her heirs and assigns, One Half (½) interest of the Homestake Mining Claim, situated in the Battle Mountain Mining District, County of Lander, State of Nevada, bounded and described as follows, to wit:

The Homestake Placer situated in Copper Canyon Battle Mountain Mining District, Lander County, State of Nevada, and more fully described on the County records.

TO HAVE AND TO HOLD, the said premises forever.

IN WITNESS THEREOF, the said party of the first part have hereunto set his hand the day and year first above written.

JOHN J. HEALEY.

Signed, sealed and delivered in the presence of:

J. CARLTON BRAY.

EDW. HERKELRATH.

State of Nevada,

County of Lander,—ss.

On this 4th day of May, A. D. one thousand nine hundred and fourteen personally appeared before me, L. A. LeMAIRE, a Notary Public in and for the County of Lander, John J. Healey, known to me to be the person described in and who executed the foregoing [253] instrument, who acknowledged to me that he executed the same, freely and voluntarily, and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in the County of Lander, the day and year in this Certificate first above mentioned.

[Seal] L. A. LEMAIRE,
Notary Public in and for the County of Lander, State of Nevada.

[Endorsed]: Deed of Mining Claim. Healey to Healey, Dated May 4th, 1914. Filed for record at the request of John J. Healey May 5th, 1914, at 20 min. past 4 o'clock P. M., and recorded in Book 53 of Deeds, Page 338, Lander County Records. Bert Acree, Recorder. File No. 3853.

Mr. THATCHER.—I offer in evidence a power of attorney from Lilian V. Healey to John J. Healey, dated the —— day of April, 1914, acknowledged on the 18th day of April, 1914, before T. M. Knoles, notary public in and for the County of Los Angeles, State of California.

(The Power of Attorney is admitted in evidence without objection, marked Plaintiffs' Exhibit "A–1," and reads as follows:)

**Plaintiffs' Exhibit "A–1"—Power of Attorney from Lillian V. Healey to John A. Healey.**

KNOW ALL MEN BY THESE PRESENT, That I, Lilian V. Healey, of Elko, Elko County, and State of Nevada, have made, constituted and appointed, and by these presents do make, constitute and appoint John J. Healey my true and lawful attorney for me and in my place and stead to sign any deeds whatsoever may arise in any section of the State of Nevada, giving and granting unto my

said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done to all intents and purposes as I might or could do if personally present.

IN WITNESS WHEREOF I have hereunto set my hand and seal [254] the —— day of April, one thousand nine hundred and fourteen.

LILIAN V. HEALEY.

Witness:

T. M. KNOLES.

WINIFRED HEALEY.

State of California,
County of Los Angeles,—ss.

On this 18th day of April in the year one thousand nine hundred and fourteen, before me, T. S. Knoles, a Notary Public in and for said Los Angeles County, residing therein, duly commissioned and sworn, personally appeared Lillian V. Healey, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in said County, the day and year in this certificate first above written.

[Seal] T. S. KNOLES,
Notary Public in and for Los Angeles County, State of California.

[Endorsed]: Filed for Record at the request of J. W. Donnelly May 2d, A. D. 1914, at 4:40 P. M., and recorded at page 211 of Book 4 of Powers of Attor-

ney, Records of Lander County, Nevada. Bert Acree, County Recorder. No. 3844."

Mr. SPRINGMEYER.—We will withdraw our objection to this deed, to save time, we understand the original is in the hands of the recorder of Lander County. (Referring to deed of March 20th, 1915, between Faubert, Cole, Malley and Ross.)

Mr. THATCHER.—I am satisfied if Mr. Malley were called, he would say he had put the stamps on, because the recorder would not have recorded it unless he had.

(The deed is admitted in evidence, marked Plaintiffs' Exhibit "A-2," and reads as follows:) [255]

**Plaintiffs' Exhibit "A-2"—Deed from Noah Faubert to Cole, Malley & Ross.**

THIS INDENTURE, made this 20th day of March, A. D. 1915, between Noah Faubert, the party of the first part, and Geo. A. Cole, Ed. Malley and Gilbert Ross, the parties of the second part, WITNESSETH:

That the said party of the first part, for and in consideration of the sum of Ten Dollars to him in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, remise, release and forever quitclaim all his right, title and interest in and to the Guy Davis placer claim, situate in the Copper Canyon Battle Mountain Mining District, Lander County, State of Nevada.

TOGETHER with all and singular and tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining; and the reversion

and reversions, remainder and remainders, rents, issues and profits thereof; and also the estate, right, title and interest, property, possession, claim and demand whatsoever, as well in law as equity, of the said party of the first part of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances, unto the said parties of the second part, and to their heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed—NOAH FAUBERT. (Seal)

State of Nevada,
County of Ormsby,—ss.

On this 20th day of March, A. D. 1915, personally appeared before me, ———, Noah Faubert, known to me to be the [256] person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same, freely and voluntarily for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have unto set my hand and affixed my official seal the day and year in this certificate first above written

_____,
Notary Public."

**Testimony of Gilbert C. Ross, in His Own Behalf.**

Mr. GILBERT C. ROSS, one of the plaintiffs, called as a witness, after being sworn, testified as follows:

Mr. THATCHER.—Q. What is your name?

A. Gilbert C. Ross.

Q. Where were you born, Mr. Ross?

A. Gold Hill, Storey County, Nevada.

Q. Are you a citizen of the United States?

A. I am.

Q. Have you ever been out of the United States since you were born? A. I have not.

Q. You have continuously resided in the United States? A. I have.

Mr. THATCHER.—That is all.

Mr. SPRINGMEYER.—Q. You are Bank Commissioner for the State of Nevada at the present time, are you not, Mr. Ross? A. I am.

Mr. SPRINGMEYER.—That is all. [257]

**Testimony of John J. Healey, for Plaintiffs.**

Mr. JOHN J. HEALEY, recalled for further examination, testified as follows:

Mr. THATCHER.—Q. Mr. Healey, do you know Lilian V. Healey?

A. Yes, sir.

Q. Who is Lilian V. Healey? A. My wife.

Q. Are you and your wife living together?

A. Yes.

Q. You are not separated? A. No, sir.

Q. Where is she at the present time?

A. Los Angeles.

(Testimony of John J. Healey.)

Q. Did Mrs. Healey give you a power of attorney?

A. Yes, sir.

Q. I call your attention to a power of attorney. (Hands to witness.) A. Yes, sir.

Q. When were you and Mrs. Lilian V. Healey married? A. We were married in 1901.

Q. And you have lived together ever since that time as husband and wife?

A. Yes, sir, that is except when I am away.

Q. Were you both residents of Nevada during the years 1913, 1914, and 1915 up to the present time?

A. We were residents of Nevada during 1913 and part of 1914.

Q. Where is your residence now?

A. My residence is in Copper Canyon.

Q. Where did you vote the last election?

A. I voted in Aurora.

Mr. THATCHER.—That is all, you may cross-examine.

Mr. SPRINGMEYER.—No cross-examination.

Mr. THATCHER.—If this is about the recess time, I would like to take a recess now, I would like to go and get the revenue stamps necessary to complete two deeds made merely for the purpose of consolidating these cases, so there could be no question as to the regularity of the proceedings or the stipulations. [258] made by counsel. I will necessarily have to delay a few minutes counsel objecting to the introduction of them until the revenue stamps are attached.

Mr. ELLIS.—It cannot be corrected under the

(Testimony of John J. Healey.)

statute, at this time, it is too late.

The COURT.—Well, I will hear you on that.

Mr. SPRINGMEYER.—We will admit you have the revenue stamps put on to-day as soon as you can.

Mr. THATCHER.—I might as well put them on while I am at it.

The COURT.—Very well, we will be in recess for ten minutes.

AFTER RECESS.

Mr. THATCHER.—I offer in evidence, if the Court please, a deed dated May 24th, 1915, from George B. Thatcher to J. J. Healey, for an undivided one-tenth interest in and to the Guy Davis Placer.

Mr. ELLIS.—Defendant objects to the introduction and admission of the paper tendered in evidence, on the ground it did not at the time of its execution, or at any time subsequent, until within the last moment, have any United States internal revenue stamp attached hereto, and cancelled, as required by the Act of 1914, becoming effective December 1st, 1914; and that it cannot now be validated in the absence of the maker of the deed, or without following the procedure required by the act itself.

Mr. FORMAN.—Mr. Thatcher is the maker of the deed.

Mr. ELLIS.—Well, we object for the further reason that the maker of the deed cannot now, at this time, validate the instrument by attaching and cancelling the revenue stamps.

The COURT.—Have you anything to say?

Mr. THATCHER.—No, sir.

(Testimony of John J. Healey.)

The COURT.—I will sustain the objection for the present. [259]

Mr. THATCHER.—I would like to have it marked if the Court please, and I ask for the benefit of an exception.

(The deed is marked for identification.)

Mr. THATCHER.—I offer in evidence a deed, dated May 24th, 1915, from Frank L. Reber to Gilbert C. Ross, George A. Cole, Ed. Malley and Guy Davis, for all his right, title and interest in and to the Homestake placer, to which there is attached, and was attached a few minutes ago, since the execution of the deed by me, and not by Mr. Reber, a revenue stamp in the proper amount. The deed is duly acknowledged before William McKnight, notary public.

Mr. ELLIS.—Defendant objects to the admission in evidence of the deed tendered for the reason it did not have at the time of its execution or at any time subsequent until within the last few moments, the required United States internal revenue stamp, and the same cancelled, and that the same was not attached by the maker thereof, nor by his authority, nor in the manner specified by the Internal Revenue Act itself.

The COURT.—It will be the same ruling, and you may have an exception.

Mr. THATCHER.—We ask for the benefit of an exception.

(The deed is marked for identification.) [260]

**Testimony of Robert L. Phillips, for Plaintiffs (Recalled.)**

Mr. ROBERT L. PHILLIPS, recalled for further examination, testified as follows:

Mr. THATCHER.—Q. Mr. Phillips, have you been over the ground of the Salt Lake No. 3—Guy Davis placer, Midas, and Evening Star within the last few weeks? A. Yes, sir.

Q. Did you take any samples from that ground?

A. I did.

Q. How many samples did you take, altogether?

A. I took twelve.

Q. Twelve samples altogether? What did you do with the samples of rock that you took?

A. I turned them over to you.

Q. From where did you take those samples, just designate them—did you make a memoranda at that time? A. Yes, sir.

Q. Will you point out on the map where you took the samples. Where did you take sample number one, how many samples did you take and how many times did you sample number one? A. Twice.

Mr. DEITRICH (JUROR).—Does that mean number one shaft?

Mr. THATCHER.—I will point out from where he took them.

WITNESS.—Number one came out of the shaft marked number one above the wagon road.

Q. You sampled that twice?

A. I took two samples from there.

Q. Did you deliver both of those samples to me?

(Testimony of Robert L. Phillips.)

A. I did.

Q. Where did you take sample number two?

A. I took sample number two just above the road, southeast of the shaft.

Q. How many samples did you take from that?

A. I took two.

Q. Where did you take sample number three?

A. I took number three from a cut marked on this map "2." [261]

Q. Sample number 3 was taken on the Salt Lake No. 3—Guy Davis? A. Yes, sir.

Q. From cut marked cut number "2"?

A. Yes, sir.

Q. That is where sample No. 3 was taken?

A. Yes, sir.

Q. Where was sample number four taken?

A. Sample number four was taken from cut marked "3" on this map.

Q. Do you know when that work was done?

A. That work was done along in July and August.

Q. What year? A. 1915.

Mr. SPRINGMEYER.—Q. Do you know that of your own knowledge?

A. Yes, sir.

Mr. THATCHER.—1915?

A. This last summer.

Mr. SPRINGMEYER.—1914?

A. Last year—1914, yes.

Mr. THATCHER.—Q. That is sample number 4?

A. That is sample number four.

Q. Where was sample number five taken from?

(Testimony of Robert L. Phillips.)

A. Sample number five was taken from cut marked on this map "4," between the two buildings.

Q. Sample number five?

A. Sample number five.

Q. Where was sample number six taken from?

A. Sample number six was taken from the Midas, in the shaft marked "21," on this map.

Q. Where was sample number seven taken from?

A. Sample number seven was taken from—

Q. You may use your memoranda, if necessary.

A. Sample number seven was taken from the tunnel marked "22."

Q. Where was sample number 8 taken from?

A. Sample number eight was taken from a cut on the Midas marked "23."

Q. When was that cut done? [262]

A. I could not say just when that was done; it has been done since 1913, since November or December.

Q. Since the institution of this suit? A. Yes.

Q. Or the other suit? A. Yes.

Q. Since the location of the placer? A. Yes.

Q. Where was sample number nine taken from?

A. Sample number nine was taken from cut marked on this map "20."

Q. That work was done on the ground at the time the location was made, was it?

A. Yes, sir, where it was sampled.

Q. Where was sample number ten taken from?

A. Sample number ten was taken from the Evening Star at cut marked "24."

Q. Cut marked "24"? A. Yes, sir.

(Testimony of Robert L. Phillips.)

Mr. THATCHER.—It is admitted, if the Court please, by counsel that the samples taken by Mr. Phillips were given to me, and by me handed to the assayer, Mr. Woodbury, and by him assayed, and that the assay returns are here, or that this is the certificate showing the assay returns.

The COURT.—That is sufficient in the absence of any testimony on his part that he made the assays correctly?

Mr. THATCHER.—I presume it is admitted that they were correctly assayed?

Mr. SPRINGMEYER.—We will admit that the assayer will so testify.

Mr. THATCHER.—I offer in evidence, if the Court please, an assay certificate, ore sample number five; and I offer another certificate of sample number six.

Q. Where did you say sample number 7 was taken from? A. Tunnel marked "22."

Mr. THATCHER.—I offer that. I offer the returns from [263] samples 9 and 10—Phillips' samples. They might all be attached together, if the Court please, and marked as one exhibit.

I also desire to offer two samples, separately taken, designated "Ore Sample No. 2" Salt Lake No. 3.

Q. You took two samples, numbering them "2," from southeast of the road—on the road southeast on cut number one? A. Yes.

(The assay certificates are admitted in evidence, marked Plaintiffs' Exhibits "A-3" and "A-4" and read to the jury:)

**Plaintiffs' Exhibit "A-3"—Ore Assay Report.**

ORE ASSAY REPORT OF CARSON ASSAY OFFICE,

Carson City, Nevada.

The one Ore Sample left for assay by Mr. George Thatcher, Carson City, Nev., at the Carson Assay Office May 18th, 1915, result as follows:

| Assay No. | Depositor's Mark. | Gold Oz. Per Ton. Tr. | Silver Oz. Per Ton. Tr. | Copper. Per Cent. 0 |
|---|---|---|---|---|
| 1033 | Ore Sample No. 6 | Gold. Trace. | Silver. Trace. | Value Per Ton. Trace. |

W. O. WOODBURY,
Assayer.

ORE ASSAY REPORT OF CARSON ASSAY OFFICE,

Carson City, Nevada.

The one Ore Sample left for assay by Mr. George Thatcher, Carson City, Nevada, at the Carson Assay Office May 18th, 1915, result as follows:

| Assay No. | Depositor's Mark. | Gold Oz. Per Ton. Tr. | Silver Oz. Per Ton. Tr. | Copper. Per Cent. 0 |
|---|---|---|---|---|
| 1034 | Ore Sample No. 7 | Gold. Trace. | Silver. Trace. | Value Per Ton. Trace. |

W. O. WOODBURY,
Assayer. [264]

ORE ASSAY REPORT OF CARSON ASSAY OFFICE,

Carson City, Nevada.

The one Ore Sample left for assay by Mr. George Thatcher, Carson City, Nevada, at the Carson Assay Office May 18th, 1915, result as follows:

| Assay No. | Depositor's Mark. | Gold Oz. Per Ton. | Silver Oz. Per Ton. | Copper. Per Cent. |
|---|---|---|---|---|
| 1036 | Ore Sample #9 | Tr. | Tr. | 0 |

| Gold. | Silver. | Value Per Ton. |
|---|---|---|
| Trace. | Trace. | Trace. |

W. O. WOODBURY,
Assayer.

ORE ASSAY REPORT OF CARSON ASSAY OFFICE,
Carson City, Nevada.

The one Ore Sample left for assay by Mr. George Thatcher, Carson City, Nev., at the Carson Assay Office May 18th, 1915, result as follows:

| Assay No. | Depositor's Mark. | Gold Oz. Per Ton. | Silver Oz. Per Ton. | Copper. Per Cent. |
|---|---|---|---|---|
| 1037 | Ore Sample No. 10 | Tr. | Tr. | 0 |

| Gold. | Silver. | Value Per Ton. |
|---|---|---|
| Trace. | Trace. | Trace. |

W. O. WOODBURY,
Assayer.

**Plaintiffs' Exhibit "A-4"—Ore Assay Report.**

"ORE ASSAY REPORT OF CARSON ASSAY OFFICE.

The one Ore Sample left for assay by Mr. George Thatcher, Carson City, Nev., at the Carson Assay Office May 24th, 1915, result as follows:

| Assay No. | Depositor's Mark. | Gold Oz. Per Ton. | Silver Oz. Per Ton. |
|---|---|---|---|
| 1044 | Ore Sample No. 2-SL. #3. | Tr. | Tr. |

| Gold. | Silver. | Value Per Ton. |
|---|---|---|
| Trace. | Trace. | Trace. |

W. O. WOODBURY,
Assayer. [265]

ORE ASSAY REPORT OF CARSON ASSAY OFFICE.
Carson City, Nevada.

The one Ore Sample left for assay by Mr. George

(Testimony of Robert L. Phillips.)

Thatcher, Carson City, Nev., at the Carson Assay Office May 18th, 1915, result as follows:

| Assay No. | Depositor's Mark. | Gold Oz. Per Ton. | Silver Oz. Per Ton. | Copper. Per Cent. |
|---|---|---|---|---|
| 1029 | Ore Sample No. 2-S. L. #3 | 0.02 | 0.44 | 0 |

| Gold. | | Silver. | | Value Per Ton. | |
|---|---|---|---|---|---|
| Dollars. | Cts. | Dollars. | Cts. | Dollars. | Cts. |
| | 41 | | 22 | | 63 |

Gold at $20.67 per oz.

Silver at 50¢ per oz.

W. O. WOODBURY,
Assayer.

Mr. THATCHER.—You may cross-examine.

Cross-examination.

Mr. SPRINGMEYER.—(Q.) Mr. Phillips, you took samples other than those the assay certificates of which have been admitted in evidence, did you not? A. No, sir—put in evidence?

Q. Yes, of the assay certificates.

A. I took twelve altogether; how many has been admitted in evidence? I took twelve samples as I said before.

Q. How many of those are in evidence?

Mr. THATCHER.—There are 7 in evidence, Mr. Springmeyer.

WITNESS.—I took samples other than those that are in evidence.

Q. Mr. SPRINGMEYER.—Now, of the samples that are not in evidence, were there any that returned values in assaying?

Mr. THATCHER.—I have not offered any testimony as to what the values were, merely that he did take the samples; and we object unless it be shown

(Testimony of Robert L. Phillips.)

that the cuts and excavations from which [266] they were taken were actually on the ground and excavated, at the time of the location of the Homestake, Salt Lake No. 3 claim.

Mr. SPRINGMEYER.—We will take the ruling of the Court, we think it is a plain proposition.

(Argument.)

The COURT.—I do not think any discovery which was made on the ground subsequent to a valid location made by plaintiffs can be of any value to you. In other words, if last week you went upon that ground and discovered ore on the Salt Lake No. 3 worth a thousand dollars a ton, I don't believe it would do you any good, if the plaintiffs made a valid discovery and location before you made this shaft. It is not a question whether there was mineral in the ground, the question is whether there was a discovery made, and if you discover anything there, no matter how rich, after a valid discovery and location by others, it does not avail you; for that reason I think the objection is well taken. I will allow you at the present time to question the witness as to any samples that were taken by him from openings in existence or from exposures that were in existence at the time these locations were made.

Mr. SPRINGMEYER.—We take an exception to the ruling of the Court on the ground it is proper cross-examination, and competent.

Q. You don't know whether these samples, the assay certificates of which are in evidence, are all from places in which no work was done since the in-

(Testimony of Robert L. Phillips.)

stitution of this suit, do you, Mr. Phillips?

A. I don't quite understand it.

(By direction the reporter reads the question.)

A. Yes, I know whether the work was done before or since.

Q. Well, as to certificate number four and number five from a cut on the hill near the mill, and from the cut between the houses, isn't it a fact that that work was done in 1914? [267] A. Yes, sir.

Q. Wasn't it done since the institution of this suit?

A. It was.

Q. But you have taken samples from that?

A. I did, yes.

Mr. SPRINGMEYER.—We move the Court then that the assay certificates as to those two be stricken out.

Mr. THATCHER.—They are not in.

The COURT.—What ones did you introduce, General?

Mr. THATCHER.—I introduced two samples number two; I introduced number five.

Q. Where was sample number five taken from; was it taken from cut number four? A. Yes.

Q. Was cut number four done since the location of the Guy Davis? A. It was.

Mr. THATCHER.—No objection, then, I concur in the motion.

Mr. SPRINGMEYER.—How about sample number two, wasn't that taken from work that was done since the institution of this suit, also? I take it your Honor's ruling goes to the matter of the location of

(Testimony of Robert L. Phillips.)

the placer claims, not necessarily to the beginning of this suit.

The COURT.—I think you had a right to make a discovery at any time before any subsequent rights intervened.

Mr. SPRINGMEYER.—The subsequent rights intervened when the placer claims were located.

The COURT.—A discovery made prior to the placer locations certainly would be work to your advantage.

Mr. SPRINGMEYER.—But not necessarily since the institution of this suit; if the work was done prior to the location of the placers, then your Honor's ruling is that the evidence is admissible; if it was done since the location of the placer claims, it is not admissible? [268]

The COURT.—That would be my idea about the matter.

Mr. THATCHER.—If I introduced any assays of samples taken from any work done subsequent to the discovery and location of these placer claims, it was an inadvertence, if the Court please, in following them down and sorting them out, I had no intention of doing so.

Mr. SPRINGMEYER.—(Q.) As to sample number two, wasn't that work done subsequent to the location of the Guy Davis placer?

A. There has been some work done there, yes.

Mr. SPRINGMEYER.—I move that be stricken out.

(Testimony of Robert L. Phillips.)

Mr. THATCHER.—Let me ask you a question or two:

Q. That was taken right on the road, was it not?

A. Yes.

Q. How long has that road been there to your knowledge?

A. It has been there since 1913, to my knowledge.

Q. From what you know of the ground has it been there prior to the location of these claims?

A. Yes, sir.

Q. This was taken right on the road, was it not?

A. Just above the road, yes.

Q. It wasn't anything in the nature of a shaft or cut, but merely where the road had been stripped off?

A. Where the road had been stripped off, and there has been a little picking done there since, just the bank picked off.

Q. Just into the bank?

A. Just into the bank.

Q. Did you pick above where they had been picking, or south of that?

A. I picked where it had been picked down.

Q. It was all on the surface, however?

A. It was all on the surface, practically, yes.

Q. In plain view to every one? A. Yes.

Mr. SPRINGMEYER.—Did you take it from the shaft above the road, that sample? I understood you said a point above the road, and at a point above the road there was some work done since [269] the location of the Guy Davis placer?

The COURT.—He said above the road first, and

(Testimony of Robert L. Phillips.)

the next time he said on the road, southeast of cut number one, is the way I understood it.

WITNESS.—It is above the road, and it is south of the shaft; that is, it is toward the mill from the shaft.

Mr. SPRINGMEYER.—(Q.) Well, do you know of your own knowledge that all the workings at the time you took these samples were in the same condition as they were at the time of the location of the Guy Davis placer and the Homestake placer?

A. At all the workings?

Q. Yes, the workings from which you took these samples that are admitted in evidence, assay certificates, rather, which are admitted in evidence.

A. That they are in the same condition now that they were before?

Q. Then at the time you took the samples they were in the same condition as they were when the placer claims were located?

A. No, they are not in the same condition.

Mr. SPRINGMEYER.—Then we move that all the certificates be stricken from the record, and be taken from the evidence.

Mr. THATCHER.—Don't be in too big a hurry, if you will ask him a few more questions you will find out.

The COURT.—I think you didn't continue to enumerate the certificates you offered in evidence, General Thatcher; I suggested a while ago that you call off the numbers of the certificates you offered in evidence.

(Testimony of Robert L. Phillips.)

Mr. THATCHER.—Number 2, two certificates; number 5, stricken out; number 6 is the next one; number 9; number 10.

Q. Let me call your attention, Mr. Phillips, where did you take sample number 6 from, what cut?

A. From a shaft east of the location monument on the Midas. [270]

Q. Is that number 21?

A. That is number 21.

Q. Is that shaft in the same condition now, and when you took this sample, that it was when you first saw it? A. Yes, that shaft is.

Q. That shaft is? A. Yes.

Q. Now, where did you take sample number 7?

The COURT.—(Q.) Does that mean the same condition it was before the placer claims were located?

A. Yes, sir, prior to the institution of the other suit.

Mr. THATCHER.—(Q.) Now sample number 7, where did you take that?

A. I took that from the tunnel running from the gulch southeast of the location.

Mr. SPRINGMEYER.—I submit this is merely reiteration; he has testified before from where he took them.

Mr. THATCHER.—I want to show that he took them from the tunnel, and while there may have been some change in the condition of the tunnel, there has been no change in the point where he took them, that that point was exposed at the time of the former trial

(Testimony of Robert L. Phillips.)

and at all times during this proceeding. I think that is competent.

The COURT.—Why, in order to save time, couldn't you go over that matter with him at the recess, and then have him testify that he took the samples from certain ground that was exposed at the time?

Mr. THATCHER.—That is satisfactory to me.

The COURT.—Perhaps you would rather question the witness about it before there is any conversation over the matter between counsel and the witness.

Mr. SPRINGMEYER.—Oh, no; I want to say this, however, on your Honor's ruling we will move to have all evidence as to any values, particularly as to assays taken, stricken out, because [271] there has been no showing whatever that the condition was precisely the same at the time of the examination as at the time of the location of the placers.

The COURT.—I didn't intend to make the ruling quite as broad as that. Suppose at the time the placer was located, in shaft number 21, for instance, there was a depth attained of ten feet, since that time we assume you have sunk that shaft to a depth of forty feet; the first ten feet were exposed at the time the placers were located; a sample taken within that ten feet I think would be admissible, because the ground was exposed; a sample taken from the bottom of that shaft was taken from ground which was not exposed at that time, and it seems to me, would be inadmissible.

(Testimony of Robert L. Phillips.)

Mr. SPRINGMEYER.—We are undoubtedly limited to proving that there was a discovery of mineral in place on each of our lode claims prior to the location of the placer claims; but we say it is evidential of the fact that there was a prior discovery if we show that at any time, whether it is since the location of the placers, or prior to the location of the placers, there has been mineral discovered, and we say if your Honor rules that samples taken since the discovery or location of the placer claims is proof admissible to show there were no values and no mineral in place on the lode claims, then it would be admissible to show the contrary, or the opposite proof.

The COURT.—That question is not presented, because as I understand General Thatcher's position, he don't intend to offer any assays made in lode or vein formations, or anything that is claimed to be such, that was not exposed prior to the time when the placers were located, and if he has put anything of that kind in it is a matter of inadvertence. In your case it is not for you to prove there is mineral in the ground, it is for you to [272] prove that before the placers were located you had discovered mineral, and if the mineral was exposed at that time, we may safely presume if it was exposed in some of your workings that you had discovered it. I think for the present I shall only admit assays to show lode values where the assays were taken; I don't care when they were taken, they may have been taken yesterday, for that matter, but they must have been

(Testimony of Robert L. Phillips.)

taken from surfaces exposed prior to the time and at the time the placer locations were made; now is that clear?

Mr. SPRINGMEYER.—Yes, I understand your Honor's ruling. Of course we take an exception to the ruling of the Court on the ground it is proper cross-examination.

The COURT.—You have that exception in. Your question was as to whether he had any other samples. If he took any samples from the ground that was exposed, the ruling is that he must answer; if he took other samples from ground not exposed, my ruling is that he need not answer. I don't think your question covered that, and when you go into this matter again, or now, just as you choose, I think you had better ask a question which will bring you strictly within or without the rule, as the case may be.

Mr. THATCHER.—(Q.) Mr. Phillips, some of these cuts from which you took these samples have been changed somewhat since the last suit, and since the location of the placers?

A. Yes, they have.

Q. In taking these samples, however, did you take them from the old points, rather than from the changed points? A. Some of them I did.

Q. The ones that have been put in evidence were taken from the old points as then existed on the ground at that time? A. Yes, sir. [273]

Mr. SPRINGMEYER.—(Q.) You were not in Copper Canyon at the time the placer claims were lo-

(Testimony of Robert L. Phillips.)

cated, were you? A. I was not, no.

Q. You don't know, then, that the ground from which you took these samples was in the same condition at the time you took the samples as it was at the time the placer claims were located?

A. Well, I know about the change that has been made since November, 1913; that was subsequent to the time they were located.

Q. And that is all you know as to the conditions of the ground, of your own knowledge?

A. Yes, sir.

Mr. SPRINGMEYER.—We renew our motion, if the Court please, that records pertaining to the assay certificates, and evidence concerning the values and samples, be stricken out.

Mr. THATCHER.—I will connect it up, if the Court please, with the testimony of Mr. Healey, that the ground on these cuts, on November 22d, or when he examined them the first time, that the cuts were in the same condition as they were when the placer claims were located.

The COURT.—If that matter is not proven, it will have to go out.

Mr. THATCHER.—Any further cross-examination?

Cross-examination Resumed.

Mr. SPRINGMEYER.—(Q.) Did you take any samples the assay certificates of which are not in evidence, from the ground which was in the same condition at the time you first saw it as it was at the time you took the sample?

(Testimony of Robert L. Phillips.)

A. No, sir, I have not taken any samples—I helped take samples, I helped Mr. Pickett take samples.

Q. Do you know whether the samples to which you testified you had had assays made, and which are not here in evidence, were [274] from ground that was in the same condition in November, 1913, at the time you entered the canyon, as at the time you took the sample?

A. Yes, the conditions were the same where those was taken from; but I didn't have those samples, I only helped Mr. Pickett take them.

Q. How about these assay certificates which you have identified, but which are not in evidence?

A. Those?

Q. Yes. Didn't you have those identified by the witness, General Thatcher?

Mr. THATCHER.—No, sir, I did not.

Mr. SPRINGMEYER.—Didn't he testify as to having taken the samples?

Mr. THATCHER.—He testified as to having taken the samples, yes.

WITNESS.—I thought you were speaking of those twelve, if I had taken any more other than those twelve.

Mr. SPRINGMEYER.—No, there are seven in evidence, and five not in evidence.

Mr. THATCHER.—If you will take each one at a time, that have not been introduced, and ask him to point out the position, and ask whether that cut was on the ground at the time of the location of the

(Testimony of Robert L. Phillips.)

placers, he can tell you.

Mr. SPRINGMEYER.—All right.

Q. As to ore sample number one, Salt Lake No. 3, where was that taken?

A. Taken from shaft marked on this map number one.

Q. Was that shaft in the same condition, so far as you know, at the time you took the sample, as it was at the time you entered the canyon?

A. That shaft was not there at the time I entered the canyon. [275]

Q. That is, in November, 1913?

A. In November it wasn't there; I entered the canyon in October, I testified.

Mr. THATCHER.—Was it there in October?

A. I could not say in October; in November it wasn't there—if it had been there in October it would have been there in November.

Mr. SPRINGMEYER.—(Q.) As to ore sample number 8, do you know where that was taken from?

A. Number 8?

Q. Yes.

Mr. THATCHER.—Use that memorandum if you want to.

A. It was taken from that cut marked "23" on this map.

Mr. SPRINGMEYER.—(Q.) Was that cut in the same condition in November, 1913, as at the time you took the sample? A. It was not there.

Q. Now, as to ore sample number one, Salt Lake

(Testimony of Robert L. Phillips.)

No. 3; is that from the same spot as the other?

A. That is from the same spot.

The COURT.—That is from a shaft that was not in existence in November?

Mr. SPRINGMEYER.—That is from point number one, also? A. Yes.

Q. So far as you know, that shaft was not in existence at the time you entered the canyon in 1913?

A. Yes, sir; I say it was not in existence at that time.

Q. It was not in existence? A. No.

Q. Now ore sample number four, from Salt Lake No. 3. A. Number four?

Mr. THATCHER.—Speak right out and tell where that sample was taken from, so the reporter can get it.

A. Number four was taken from a cut marked on the map number "3." [276]

Mr. SPRINGMEYER.—(Q.) Was that in existence at the time you entered the canyon in November, 1913? A. No.

Q. Now assay sample number three, Salt Lake No. 3, where was that taken from?

A. That was taken from a cut marked on this map "2."

Q. Was that cut in existence in November, 1913?

A. No, sir.

Q. Ore sample number five, Salt Lake No. 3.

A. Number five was taken from a cut marked on this map "4."

Q. Was that cut in existence in November, 1913?

(Testimony of Robert L. Phillips.)

A. No, sir.

Mr. SPRINGMEYER.—That is all.

Redirect Examination.

Mr. THATCHER.—(Q.) Mr. Phillips, I call your attention to number 21 shaft on the Midas, you saw that when you came into the canyon in 1913?

A. Yes, sir.

Q. Based upon your experience as a miner, had there been any work done in that shaft within the last three or four or six months?

A. There had not.

Q. Calling your attention to this tunnel number "22," you saw that when you went into the canyon, at that time? A. Yes, sir.

Q. Based upon your experience as a miner, and from the observations you made at that time, had there been any work done on that tunnel within the last three or four, or even six months, preceding your entrance into the canyon?

A. It didn't look like there had.

Q. Well, in your opinion had there? A. No.

Q. Calling your attention to cut number 20 on the Evening Star, you saw that when you came into the canyon, and examined it? A. I did.

Q. Based on your experience as a miner, and from your observations made of it, had there been any work done on that within [277] three months, or within six months preceding the time when you first saw it? A. No, I should say not.

Mr. HIBBARD (JUROR).—What was the number of that sample?

(Testimony of Robert L. Phillips.)

The COURT.—Sample number nine.

Mr. THATCHER.—(Q.) Calling your attention to number 24, when you first saw that what was the condition of that cut with reference to the floor of it?

A. The floor of it was filled in with loose dirt, and a lot of sagebrush growing in it.

Q. Based upon your experience as a miner, and from the obeservations you made of the sagebrush and filling, and the caving in of it, would you say no work has been done on that within the last six or eight months of more preceding the time when you went into the canyon?

A. Yes, I would say for five or six years at least, may be seven or eight.

Mr. HIBBARD (JUROR).—What number was that?

Mr. THATCHER.—That is sample number 10, that was introduced in evidence. All of these I have last called attention to were introduced in evidence.

Mr. HIBBARD (JUROR).—I would like to ask another question: Could you show us which shafts the samples that Governor Boyle took, that showed values, were taken from?

Mr. THATCHER.—I will call your attention to that a little bit later; I will have to review the examination and his memoranda that he made, and then I can call your attention to it. Any further questions?

Mr. SPRINGMEYER.—No further questions.

Mr. THATCHER.—If the Court please, we rest.

Mr. ELLIS.—If the Court please, we have some

(Testimony of Robert L. Phillips.)

motions we desire to present to the Court, and we believe it should be done in the absence of the jury, and we ask that they be excused. [278]

The COURT.—How long will it take you to present them?

Mr. ELLIS.—I don't know, perhaps half an hour.

(The jury is admonished, and excused until tomorrow, May 28th, 1915, at 9 o'clock, A. M.)

Mr. ELLIS.—If the Court please, the defendant in each of the cases now on trial moves the Court to strike out from the record and evidence, all portions of the evidence produced by plaintiff as to the absence of lodes, or the failure or inability of the witnesses to find or discover lodes, or mineral-bearing rock in place, upon or within the limits of the Salt Lake No. 3 mining claim, and in the other case, the Midas and the Evening Star, or upon portions thereof in conflict with the placer locations of the plaintiffs, upon the ground that said evidence is immaterial, irrelevant, insufficient and inadmissible, and does not follow or tend to prove any averments contained in the complaint, and is not directed to any question now before the Court in plaintiffs' case in chief.

By reference to the complaints in the cases, if your Honor please, the Court will see that the sole allegation tendered to us for answer is that the plaintiffs at a day certain in the year 1913, entered upon certain public land, and filed placer locations, and thereby became the owners of said premises, and entitled to the possession thereof; that the possession was

invaded by the defendant in each case, without right, in about the month of August, 1913, and that the defendant proceeded to apply for a patent, to which plaintiffs filed an adverse, and brought this suit in support of it, and they ask for a judgment for possession of the ground in conflict. In support of that allegation in chief, the only evidence admissible is that going to [279] the averments in the complaint itself, that is, the location by the plaintiffs, and that it was on unoccupied public land, and that the defendant invaded it. We are not called upon, as we understand it, to go into the subject or discussion of whether the land contained any lodes or mineral-bearing veins or not.

We wish to present this motion first, and obtain the Court's ruling on it.

The COURT.—I will pass on the whole matter together.

Mr. ELLIS.—In both of the cases at bar the defendant moves the Court for an order of nonsuit on the following grounds:

First. That the complaint herein does not state facts sufficient to constitute a cause of action, or for an adverse. That includes the failure to allege the vacant, unoccupied character of the land.

The COURT.—On what do you base that—that it is not a sufficient statement of a cause of action because it does not state it was open, unappropriated land?

Mr. ELLIS.—Yes, sir, for one ground, and at the time I drew this, in view of the further contention that the complaint did not contain sufficient allega-

tion of the adverse filed by the plaintiffs in the land office.

Second. Because sufficient facts have not been proved by the plaintiffs herein to entitle them to a verdict or judgment in their favor, or any affirmative relief; and because their proof shows they are entitled to no verdict, judgment, or relief herein; and because insufficient facts have been proved to entitle the plaintiff to go to the jury.

Third. Because there is a fatal misjoinder of parties plaintiff herein, and, as shown by the evidence, some one or more of the plaintiffs had no interest in the subject matter of this action at the time of the commencement of the suit, and did not [280] derive any title from the plaintiffs at the time this suit was begun, who at that time had any such title, interest or right to protect.

The COURT.—Just state that again, I did not understand you.

Mr. ELLIS.—Some of the plaintiffs, in other words, when the suit was begun had no title or interest in the subject matter of this action, and therefore could not convey any interest to plaintiffs.

Fourth. Because there is a defect of parties plaintiff, and a non-joinder of necessary parties plaintiff.

Fifth. Because plaintiffs have not shown that the ground on which the Guy Davis Placer, or, in the other case, the Homestake placer, was located, was at the time of such location vacant and unoccupied public land of the United States, but the proof shows the contrary.

Sixth. Because the case made does not support

the alleged adverse claimed to have been filed in the land office of the United States at Elko, Nevada, as alleged in the complaint as filed, and answer herein.

Seventh. Because the plaintiffs are estopped to deny the mineral character of the ground upon which they filed their placer locations in the two suits at bar.

Eighth. And because, further, the plaintiffs' evidence shows affirmatively that the lode locations with which their several placers conflict, were at the time of the making and filing of said placer locations, occupied and held by the defendant and his predecessors in interest through their employees, agents, and so forth.

(Argument on the Motions.)

(Court adjourned at 5:30 P. M., until to-morrow, May 28, 1915, at 8:30 A. M.) [281]

Friday, May 28th, 1915.

Court convened 8:30 A. M.

(Argument on the motions resumed and concluded.)

The COURT.—I have not been able to give this matter as careful examination as I would like to have done, but I shall deny the motion for a nonsuit. The burden is undoubtedly on the plaintiffs to establish their case; they must make out a *prima facie* case; they must show their own location, their discovery work, the staking of their claims, and the filing of their certificates; they must also show that the ground in dispute was open to location. In the case cited yesterday by Mr. Springmeyer: Moffat vs. Blue River Gold Excavating Company, 80

Pacific, page 140, the plaintiff contended that after defendant had closed its case, he should have been permitted to show abandonment in rebuttal. The Court said: "This we do not regard as sound doctrine. The plaintiff contested the issuance of patent to the defendant upon the ground that he had the legal right to the premises in controversy by virtue of a full compliance with the law, and by actual prior possession of the ground as a placer mining claim located on the public domain. To make out a *prima facie* case he was required to establish, in addition to the other requirements of the law, that the ground was not covered by a prior location, or, if it should appear from his testimony that the land was covered by a prior location, that such location was invalid, that the claimant had forfeited his right to the land by failure to comply with the law, or that the claim had been abandoned."

The Supreme Court of Colorado thus seems to give countenance to the doctrine that the plaintiff may show the prior location was invalid, that it had been forfeited by failure to comply with [282] the law, or that it had been abandoned; he is not confined to a showing that the claim had been abandoned.

In a case like this, where relocators go upon the ground and examine it to ascertain whether there has been a discovery or not, and whether the previous locator has complied with the law, they can not be held to have waived all defects, except the failure to do the annual assessment work. There can be no waiver of a right in the absence of some act, declaration or conduct indicating such an intention.

Plaintiffs have, so far as the record discloses, always insisted that there was no lode discovery, and that the only discovery was of placer.

I cannot put my finger on the precise paragraph in the case of Golden vs. Murphy (27 Nev. 379), in which our Supreme Court has considered the effect of a relocation; but in that particular case it appears that in the relocation notice, or the relocation certificate, the relocator stated that it was a relocation of a prior claim, and that he relocated it on the ground that the prior locator had failed to perform the annual labor. The relocator indicates the very defect on which he relies, and thus may be regarded as waiving others.

If plaintiffs' relocation is an admission that a valid discovery has been made, it is an admission of placer rather than lode values. I cannot regard this relocation as a waiver of defects in the prior location.

Mr. SPRINGMEYER.—We take an exception to the ruling of the Court.

The COURT.—The exception will be noted.

Mr. ELLIS.—We would like to add to our motion an additional ground, or separate ground, based on the fact there is a variance between the plaintiffs' pleading and proof, upon the subject of the nature of the estate and title sought to be protected in this action. [283]

The COURT.—That is, a joint ownership is plead, and the proof shows a several ownership.

Mr. ELLIS.—Yes. Some one or more of the plaintiffs may own some interest in it, and other

plaintiffs have no interest at all who are now before the Court.

The COURT.—In view of the statute, which says that the Court may in furtherance of justice allow a party to amend his pleadings by adding to the parties, or by striking our parties, I can not dismiss this action on that ground; and particularly in the absence of any authorities which so hold.

As to the failure of the grantors in these deeds to affix proper stamps, that question seemed to me on the statement made yesterday to be rather a serious one, but I have examined the three authorities cited in Henderson on the Revenue and Income Tax Bill, and they seem to hold that such an omission is not fatal—it does not destroy the force and effect of the deed as evidence, provided there is no testimony tending to show that the failure to put the stamp on the instrument was an attempt to evade the tax and defraud the Government; if such a thing had occurred, I presume the ruling would have been different, though the authorities don't so hold. I shall allow those deeds to go in evidence, but they will go in subject to your objection. None of these questions are absolutely concluded, except the motion for a nonsuit, to which you have your exception; the other questions will be disposed of in the instructions.

Mr. ELLIS.—Defendant excepts to the ruling of the Court overruling the defendant's motion for a nonsuit upon the several grounds first submitted, and also upon the additional ground of a variance between the pleadings and the proof.

Defendant further excepts to the ruling of the

Court in admitting in evidence plaintiffs' tender and offer of certain deeds [284] upon which the required United States internal revenue stamps did not appear, and were not attached when offered, upon the ground that the said deeds were not properly stamped, as required by law, with the revenue stamps cancelled, according to the requirements of the Act.

The further motion we made yesterday, your Honor, to strike out certain evidence, is that disposed of at the present time?

The COURT.—I do not think the motion to strike out that testimony can be granted. Any defect in your title, any failure on the part of a prior locator to do the work required by law, must be shown by the plaintiffs in their case in chief. The only ground on which it could be excluded is that the pleadings are not broad enough to cover it, and my opinion, in the absence of any authorities to the contrary, is that the pleading is broad enough to cover all this testimony showing the goodness of their title, and your failure to acquire a good title prior to their location.

Mr. SPRINGMEYER.—We except to the ruling of the Court on the ground that the complaint does not state facts sufficient to constitute a cause of action, nor to warrant the admission of particular proof, and that the evidence offered is not within the issues as presented. We concede that the case to which your Honor referred was a case in which the pleadings were correct, and that the plaintiff in the first instance alleged the things which would enable

him to produce and adduce that proof, which we say is not the case here.

The COURT.—If you find you have not covered these points with your exceptions, you may do so later, provided you call my attention to it.

(The jury returns into court at 10 o'clock A. M.)

[285]

The COURT.—(Addressing the jury). Gentlemen, a motion for a nonsuit has been interposed by the defendant, and denied. I presume those of you who have sat on juries before understood, or had a very shrewd suspicion as to what was going on; but the fact that I have denied the motion is not a matter to control you in any way whatever. The rule that governs me in these matters is very different from the rule which governs you. If there is any evidence in the case tending to support the plaintiffs' contentions on each material point, I am bound to submit it to the jury; but when it comes to you, you are to weigh the testimony, and if the evidence in favor if plaintiff does not preponderate over that in favor of defendant, you must find for the defendant. You are not to draw any conclusions from what I have done except the mere conclusion that the case will ultimately be for your decision. This is not a decision on my part that the plaintiffs should win; it is simply a decision that the plaintiffs have put in testimony which ought to go to the jury.

(The deeds previously offered in evidence by the plaintiffs, and now admitted are marked Plaintiffs' Exhibits "A–5" and "A–6," and read as follows:)

**Plaintiffs' Exhibit "A-5"—Deed from Geo. B. Thatcher to J. J. Healey.**

THIS INDENTURE, Made the 24th day of May one thousand nine hundred and fifteen, BETWEEN Geo. B. Thatcher, the party of the first part, and J. J. Healey, the party of the second part,

WITNESSETH: That the first party in consideration of the sum of Ten Dollars, gold coin of the United States of America, to him paid, by the second party, the receipt whereof is hereby acknowledged, by these presents does grant, bargain, sell, remise, release and forever QUITCLAIMS, unto the second party, and to his [286] heirs and assigns, all of an undivided one-tenth interest in and to the Guy Davis placer Mining Claim, situated in the Battle Mountain Mining District, County of Lander, State of Nevada, bounded and described as follows, to wit:

For a more particular description of which reference is hereby made to the location certificate of said Guy Davis placer claim of record in the office of the County Recorder of Lander County, Austin, Nevada.

TOGETHER with all the rights, privileges and franchises thereto incident, appurtenant, and therewith usually had and enjoyed; and all tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining:

TO HAVE AND TO HOLD, the said premises and appurtenances forever.

IN WITNESS WHEREOF, the said party of the

first part has hereunto set his hand the day and year first above written.

GEO. B. THATCHER.

Signed, sealed and delivered in the presence of:
[Ten Cent Revenue Stamp.]

State of Nevada,
County of Ormsby,—ss.

On this 25th day of May, A. D. 1915, before me, Wm. McKnight, a Notary Public in and for the County of White Pine, State of Nevada, personally appeared Geo. B. Thatcher, personally known to me to be the same person described in and whose name is subscribed to the foregoing instrument as a party thereto, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

[Seal] WM. McKNIGHT,
Notary Public.

[Endorsed]: Deed of Mining Claim. Thatcher to Healey. Dated May 24th, 1911. [287]

**Plaintiffs' Exhibit "A-6"—Deed from Frank L. Reber to Ross, Cole, Malley & Davis.**

"THIS INDENTURE, Made the 24th day of May, one thousand nine hundred and fifteen BETWEEN Frank L. Reber, the party of the first part, and Gilbert C. Ross, George A. Cole and Ed Malley and Guy C. Davis, the parties of the second part.

WITNESSETH: That the first party in consideration of the sum of Ten Dollars, gold coin of the United States of America, to him paid, by the second parties, the receipt whereof is hereby acknowledged, by these presents does hereby grant, bargain, sell, remise, release and forever QUITCLAIMS, unto the second parties, and to their heirs and assigns, all his right, title and interest in and to the Homestake Placer Mining Claim, situated in the Battle Mountain Mining District, County of Lander, State of Nevada, bounded and described as follows, to wit:

For a more particular description of which reference is hereby made to the location certificate of said Homestake placer claim of record in the office of the County Recorder of Lander County, Austin, Nevada.

TOGETHER with all the rights, privileges and franchises thereto incident, appurtenant, and therewith usually had and enjoyed; and all tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining;

TO HAVE AND HOLD, the said premises and appurtenances forever.

IN WITNESS THEREOF, the said party of the first part has hereunto set his hand the day and year first above written.

FRANK L. REBER.

Signed, sealed and delivered in the presence of:
[Ten Cent Revenue Stamp] [288]

State of Nevada,
County of Ormsby,—ss.

On this 25th day of May, A. D. 1915, before me, Wm. McKnight, a Notary Public in and for the

County of White Pine, State of Nevada, personally appeared Frank L. Reber, personally known to me to be the same person described in and whose name is subscribed to the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.

[Seal] WM. McKNIGHT,
Notary Public.

[Endorsed]: Deed of Mining Claim. Reber to Ross & Others. Dated May 24th, 1915."

(On behalf of the defendant, Mr. Springmeyer makes a statement to the jury.) [289]

VOLUME 2.
Pages 278 to 557.

*In the District Court of the United States, in and for the District of Nevada.*
Honorable E. S. FARRINGTON, Judge.

Nos. 1872 and 1873.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

TRANSCRIPT OF TESTIMONY.
BILL OF EXCEPTIONS.

Appearances:

Mr. GEORGE B. THATCHER and Mr. WILLIAM FORMAN, for Plaintiffs.

Mr. GEORGE SPRINGMEYER and Mr. P. G. ELLIS, for Defendant.

Filed July 30th, 1915.

T. J. EDWARDS,
Clerk. [290]

**Testimony of Benjamin F. Tibby, for Defendant.**

Mr. BENJAMIN F. TIBBY, called as a witness on behalf of defendant, after being sworn, testified as follows:

Direct Examination by Mr. SPRINGMEYER.

Q. Mr. Tibby, you live in Salt Lake City, Utah, do you not? A. Yes, sir.

Q. And have resided there a number of years?

A. Yes, sir.

Q. What is your occupation or profession?

A. Mining engineer and geologist.

Q. Are you qualified as a surveyor and draughtsman, in connection with your occupation as a mining engineer and geologist? A. Yes, sir.

Q. What technical training have you had, and what technical or practical experience?

A. I was graduated from the State School of Mines of the University of Utah in 1905; part of my undergraduate experience was secured at Stanford University of California; later, in the years 1909 and 1910, I put in one year of post-graduate work at the University of Utah, specializing in mineralogy

(Testimony of Benjamin F. Tibby.)

and petrology—the study of rocks. That constitutes my technical education. Since my graduation I have followed the business of mining engineering. After my graduation I was employed by the American Smelting and Refining Company for a year and a half; following that I was employed as the mine engineer for the Utah Apex Mining Company, in Bingham, Utah; following that I was employed by the International Smelting and Refining Company for something less than a year; I then went into professional practice with my father, in the general consulting and engineering business, and since that time I have followed the general practice of mining engineering and consulting work; but during that period I have also done practical mining in the way of operating properties. [291]

Q. Do you know the Copper Canyon Mining District in Lander County, State of Nevada?

A. Yes, sir.

Q. Have you ever been there?

A. I have, yes, sir.

Q. When were you there?

A. I was there in February of the present year, the exact dates, I think, were the 18th, 19th, 20th and 21st.

Q. Do you know the Midas, Evening Star and Salt Lake No. 3 claims in that district? A. Yes, sir.

Q. Did you ever make any plat or map to represent the claims and the conditions upon them?

A. I did, yes, sir.

Q. How did you make that map or plat?

(Testimony of Benjamin F. Tibby.)

A. The plat, with the map which I prepared, was delineated in my office from the official records of the Glasgow and Western Mining Company, and the patent plats in connection with the official survey of those three claims.

Q. Who furnished you the patent plat and the notes? A. Mr. Joseph Ralph.

Q. Do you know who made the patent plat and took the notes?

A. Well, I saw from the patent plat, as I recall it, that a Mr. Liddell was the surveyor.

Q. Have you ever gone over that map or plat with Mr. Liddell? A. Yes, sir.

Q. Is the map or plat you have a correct representation of the map or plat and field-notes, or notes which he presented to you?

A. Well, the information regarding the boundaries on my enlargement were taken from those plats.

Q. Are the enlargements correctly delineated upon your map or plat? A. I think so.

Q. Have you that map or plat? A. Yes, sir.

Q. Is this it? (Showing to witness.)

A. This is the map, yes, sir. [292]

(The map is fastened upon the board.)

Mr. SPRINGMEYER.—At this time defendant desires to offer this map, so far as the colors represent anything; we merely desire to offer the map in evidence for the purpose of showing the boundaries of the claims, and the workings and buildings upon the claims.

(Testimony of Benjamin F. Tibby.)

Q. Does this map properly represent the boundaries of the Salt Lake No. 3, the Midas and the Evening Star claims, to the best of your knowledge?

A. Yes, I would like to make one statement, however; that is with reference to the point marked "53," which I notice on the other plat is on the Midas claim; I would say that this point 53 was not on either the patent plat or the other maps furnished by Mr. Ralph, and was placed there purely from an observation which I took from the center line of the Midas, and it may be possible that that is over on this side; but since the cut does not amount to very much, it is immaterial, I take it.

Q. Then except for that cut you say the map is a correct representation of all the workings on the three claims?

A. So far as I know; yes, sir.

Q. Is it a correct representation of the buildings and the road, if there be a road?

A. So far as I noted from the maps furnished me; I might add, too, that there are several old buildings somewhere in this vicinity (indicating) which are not shown on the map; outside of that I think it represents the conditions on the ground.

Q. Are the contour lines shown upon the map correctly delineated?

A. Those were also taken from the company plat furnished by Mr. Ralph; I copied them correctly from that map.

Mr. SPRINGMEYER.—You may cross-examine. I want to introduce Mr. Liddell before I offer the map in evidence.

(Testimony of Benjamin F. Tibby.)

Mr. THATCHER.—It has not been offered. [283]

Mr. SPRINGMEYER.—No, I haven't made the offer yet; I will connect it up.

Cross-examination.

Mr. THATCHER.—(Q.) Do you know of your own knowledge whether or not this map correctly delineates the various workings, and the topography of the ground? A. I made no surveys.

Q. You have never made a survey of these claims at all? A. I have not.

Q. Ever been around the lines of the claims?

A. I have, yes.

Q. But without an instrument.

A. Nothing except a Brunton compass.

Q. You have not placed upon this map the various improvements on the ground from a survey of the ground? A. No, sir.

Q. What you have delineated on that map is either an assumption on your part, or taken from the data given to you either by Mr. Ralph or the patent plat?

A. The only assumption was the work "53"; the others were taken from the plats.

Q. I call your attention to what is delineated here "50-well"; does that mean fifty-foot well?

A. Yes.

Q. Do you think that is the proper location of that well? A. I could not say.

Q. With reference to other things delineated on that map? A. I could not say, sir.

(Testimony of Benjamin F. Tibby.)

Q. I call your attention to this line running down through here?

A. That is the road way, or a road way.

Q. Could you say whether or not that correctly represents its position?

A. I can only say it was taken from the Company maps or the patent plat, I do not recall which one it was from.

Mr. THATCHER.—No further cross-examination. [294]

**Testimony of Parker Liddell, for Defendant.**

Mr. PARKER LIDDELL, called as a witness on behalf of the defendant, after being sworn, testified as follows:

Direct Examination by Mr. SPRINGMEYER.

Q. Where do you reside at the present time, Mr. Liddell?

A. At the present time I am residing in Midas, Elko County, Nevada.

Q. Did you ever live at Battle Mountain, Copper Canyon, Lander County, Nevada?

A. I did for a number of years.

Q. What is your occupation or profession?

A. Mining engineer and U. S. Deputy Mineral Surveyor.

Q. Are you a qualified, competent surveyor?

A. Yes, sir.

Q. Have you ever been a United States Mineral Surveyor? A. I have.

Q. When last?

(Testimony of Parker Liddell.)

A. I believe I received a commission in the early part of 1912.

Q. How long did you retain that commission?

A. I still hold the commission.

Q. What training or experience have you had in connection with your occupation or profession as a mining engineer and surveyor, and mining man?

A. I received my technical education in the Colorado School of Mines at Golden, Colorado; I was graduated in 1903; after graduation I held a position as assayer and surveyor at the Butterfly Terrible Mining Company, near Telluride, Colorado; I have also held a position of the same character with the Lucky Tiger Mine. I have done actual underground work in the Portland and Gold Coin Mines of the Cripple Creek Mining District, the mines are situated in Victor, Colorado.

Q. Do you mean as a practical miner in those mines? A. Yes, sir.

Q. Go on. [295]

A. I examined certain placer grounds, or reputed placer grounds, for gentlemen by the name of Bondbright and Riley, at Hesperus, Colorado; I also examined placer ground for Mr. Mayham, at Tuscarora, Nevada. I practiced the work of surveyor in the employ of Mr. George C. Clarke, at Bisbee, Arizona. I have also worked in the Holbrook Mine of the Bisbee Copper Company—the Copper Queen Copper Company. Since 1906 I have followed the profession of surveying in Nevada, until about a year and a half ago, when I started operations on

(Testimony of Parker Liddell.)

the Rex Mine and Mill at Gold Circle Mining District, at Midas, Nevada, where I am engaged at the present time.

Q. You have been engaged in your profession and occupation, then, Mr. Liddell, ever since leaving school, have you not? A. I have.

Q. Actively? A. Actively, yes, sir.

Q. Do you know the Copper Canyon Mining District in Lander County, State of Nevada?

A. I do.

Q. Do you know the Salt Lake No. 3, Midas and Evening Star claims in that district? A. I do.

Q. Did you make a plat or survey of those claims?

A. I made the official survey for patent of a group of claims in which the Salt Lake No. 3, Midas and Evening Star were included.

Q. When did you do that?

A. In the summer of 1913.

Q. Do you know the months or the days?

A. Well, I was actually engaged in the survey of the claims in June, July and a portion of August, I believe.

Q. Did you make the official plat or map of those claims?

A. I made the official plat or map from the notes taken in the field in the conduct of the survey.

Q. Did you use any instrument or documents in connection with the notes taken in the field?

A. I used the ordinary transit [296] and chain.

Mr. THATCHER.—I move to strike out the answer as not responsive; counsel asked if he used any documents.

(Testimony of Parker Liddell.)

A. Well, I have not finished, General, if you will pardon me. In addition to which I referred to the copies of the certified copies of the location certificates and amended location certificates, that are usually furnished by the Surveyor General's office. I was also given the indication of the positions of the claim by residents on the ground; I referred to the Company's maps of their claims, and also took especial notice of all the monuments on the ground which I could find.

Mr. SPRINGMEYER.—Q. Was the survey that you made at that time a correct and proper representation of the claims and the workings, and everything upon the claims, so far as you know?

A. To the best of my ability, it was.

Q. Have you the notes you used in making those surveys?

A. I have the notes that I took at the time of making those surveys, yes, sir.

Q. Have you them with you? A. Yes, sir.

Q. Will you produce them, please. (Witness produces notes.)

A. They are included in this book among other notes.

Q. What pages are they, Mr. Liddell?

A. Well, they are scattered over a number of pages.

Q. Could you designate them—have you ever had the notes transcribed?

A. Only so far as I took such notes as I made here to make the official plat, and write up the official

(Testimony of Parker Liddell.)

field-notes, if that constitutes a transcription in the ordinary definition.

Q. Have you that with you? A. No.

Q. These are the notes you made in the field?

A. Yes, but the official field-notes are recorded on the plats, on the official plats. [297]

Q. Have you the copies of the official plats with you, of each of those three claims?

A. I think Mr. Ralph has a blue-print.

Q. What is that (handing to witness)?

A. Well, this is a copy of the main notes that were taken at that time, yes, of the official notes, with the exception that all of the bearings and distances of the different points of work are not given, as they were given on the official.

Q. That is not a copy, as I understand.

A. This is not a complete copy.

Q. The copies you have were copies of those filed with the United States Surveyor General, and comprise copies of your plat and official field-notes, do they, Mr. Liddell?

A. These copies I hold in my hand do.

Mr. SPRINGMEYER.—I offer those in evidence, so far as they represent the three claims—there are other claims in the same survey.

Mr. THATCHER.—No objection. I have a better copy than that; I have a photographic copy; it might show better, it is whiter.

(The plats are admitted in evidence, and marked Defendant's Exhibit No. 4.)

Mr. SPRINGMEYER.—(Q.) Mr. Liddell, in ad-

(Testimony of Parker Liddell.)

dition to the maps you have stated you made and the notes you took concerning the Salt Lake No. 3, Midas and Evening Star, did you ever go over any other map or plat of those three claims? A. I did.

Q. What was that?

A. The map that you posted on the blackboard.

Q. The map about which Mr. Tibby gave testimony? A. The same one, yes.

Q. State whether or not that is a correct representation of the claims it purports to represent?

A. Well, it is a very good [298] representation; the boundaries of the claim and the general topography are fairly accurate; there are a few minor details, such as the actual position of certain portions of the road, and certain work that may be a trifle inaccurate, but the general position and the general topography, and the general condition as it exists upon the ground is accurate.

Q. How have you examined it with reference to determining its accuracy or inaccuracy?

A. Well, I took a number of measurements of the positions of the different points on the grounds as represented on the plat ; I measured the actual lines that are on the plat, and also the actual position of most of the works shown there.

Q. Will you please state which of the workings or lines upon the plat testified to by Mr. Tibby are not entirely correct.

A. Well, I could not testify as to the position of this cut, because I don't remember of ever having

(Testimony of Parker Liddell.)

seen that; that cut was not there at the time I made the official survey.

Q. What is the number of that cut?

A. As far as I know, it wasn't there.

Q. I mean on the map?

A. The number on this map is 53.

Q. Are there any other inaccuracies, so far as you know?

A. This well shown here, fifty-foot well, is represented at the east side of the road, whereas, as a matter of fact, the actual ground that is covered there, the well is a little to the west of the actual roadway, although people drive all around at that point, except where the well actually is.

Q. As to the other matters covered by the map, state whether or not it is fairly approximate and correct representation of the claims, and workings and buildings upon them?

A. It is a very fair representation of the actual conditions that exist there. [299]

Mr. SPRINGMEYER.—We offer that in evidence, may it please the Court. You may cross-examine. We want to recall both of these witnesses later on.

The COURT.—Do you want to cross-examine him on the map before it is admitted?

Cross-examination.

Mr. THATCHER.—(Q.) Is everything else correctly delineated on this map?

A. I could not say about cut number five.

Q. How about cut number "A"?

A. Cut number "A" is practically correct.

(Testimony of Parker Liddell.)

Q. Practically correct? A. Yes, sir.

Q. Are all the other words on there correct?

A. Other what?

Q. Words and description. For instance, I call your attention to the word "Discovery" on that map, to the lower part just below number 69 on the Evening Star, and ask you was that on your patent plat?

A. No, the word "Discovery," I believe, was not on the patent plat; on the patent plat I believe that cut marked number 60 here was designated as the location discovery.

Q. Cut? A. Cut.

Q. Where was the location discovery monument as designated on the patent plat?

A. The location discovery monument of the Evening Star lode, as designated on the patent plat was about eighty feet almost directly west of the mouth of cut number 60, as given on this plat on the board.

Q. Would it correspond to the circle which I have pointed out here, just easterly on the map, of the upper end of the letter "t" in the word "Star"?

A. Just westerly.

Q. Westerly? A. Yes.

Q. That would be the location monument as shown upon your patent plat? A. Yes.

Q. I call your attention to the words "Discover shaft," was that on your map—your patent plat? [300]

Mr. SPRINGMEYER.—I was going to say, General Thatcher, that I did not offer in evidence any

(Testimony of Parker Liddell.)

words marked upon the map; I expressly refrained from doing that.

Mr. THATCHER.—Then I understand all you offer is the outline of the claim?

Mr. SPRINGMEYER.—The outlines of the workings and the outlines of the buildings, and the roads also, and the contours and the outlines of the claims.

Mr. THATCHER.—(Q.) Do you know whether or not these contour lines are correct?

A. I should say that they represent very fairly the actual topography.

Q. Did you ever take contour lines on that ground?

A. No, I never took actually with the instrument contour lines.

Q. Never did? A. I did not.

Q. Then you haven't any memorandum.

Q. I know from going over the topography what the contour of the ground is, and I can positively state that the topography as shown by this map is approximately correct; of course those contours are at considerable intervals, and any particular point I think might be a considerable distance out in case the ground at that point didn't slope to any appreciable extent; the contour at best is—

Q. (Intg.) You have never taken any contour lines on that ground?

A. No, I didn't actually, with the instrument.

Q. You don't know whether these contour lines are correct or not? Have you gone over these contour lines? A. Some of them.

Q. How many of them?

(Testimony of Parker Liddell.)

A. There are six on there; I have gone over ground which is represented by at least portions of those contour lines, and I can testify that the general contour as shown by— [301]

Q. (Intg.) There are seven, aren't there?

A. There are seven; and I can say that the general topography shown by these contour lines which are upon the different claims represented here is practically correct.

Mr. THATCHER.—That is all.

Redirect Examination.

Mr. SPRINGMEYER.—(Q.) Mr. Liddell, did you ever go over those contour lines with any one else who had made contour lines of those three claims?

A. How do you mean go over the lines—the lines as represented on that ground?

Q. Yes, on the maps—with a person who had made any of the contour lines?

A. No, I didn't review the contour lines with any one.

Q. Now with reference to the placing of discoveries on plats used in the United States mineral surveys for patents, what has been your practice and custom as to locating the position.

Mr. THATCHER.—I think the custom is immaterial; it is what he did.

Mr. SPRINGMEYER.—Well, counsel brought out the location of the discovery.

Mr. THATCHER.—Yes, I was trying to find out if that corresponded with his map, and he said that

(Testimony of Parker Liddell.)

it did not, and counsel withdrew those things from the jury, as I understand it, and they are not in evidence.

Mr. SPRINGMEYER.—Yes, that is true, I will withdraw the question; it was just simply to clear that up for the benefit of the Court and jury.

The COURT.—The contour lines are not in evidence?

Mr. THATCHER.—No, the word "Discovery" is not in evidence.

Mr. SPRINGMEYER.—Yes, but the rest of the map is in evidence [302] for what it represents, an approximation of everything, and some things accurately. We renew our offer, and put the map in evidence.

Mr. THATCHER.—We object to it on the ground that it is incompetent, irrelevant and immaterial; no proper foundation has been laid, and it has not been shown to be accurate. This is an adverse proceeding for the determination of a patent, and the patent map itself is the best evidence.

The COURT.—Well, it will be admitted for what it is worth.

(The map is marked Defendant's Exhibit No. 5.)

Mr. HIBBARD (JUROR).—I would like to ask, was this work done before the Guy Davis was taken up, or after?

WITNESS.—The patent survey was made, and the patent plats were made before the location of the claim, as I understand it; that is, I know they were made—general hearsay; I don't know exactly what

(Testimony of Parker Liddell.)

date the placers were located.

Mr. SPRINGMEYER.—(Q.) Well, did you make the survey before the month of September, 1913?

A. I did, yes.

Q. And if the two placer claims were located in September, 1913, this work of course was done prior to the location of the placer claims?

A. It was prior in that case.

Mr. MANHEIM (JUROR.)—How many days were you on the ground?

WITNESS. — Representating the actual three claims, I spent probably two days making the survey; I was actually on the Copper Canyon at different periods, a total time representing a month approximately.

Mr. THATCHER.—I would like to ask a question in that connection. (Q.) You filed a plat with the Surveyor-General of all these claims? A. I did.

Q. How many claims were included in this application for patent, 4175?

A. I believe it was sixteen. [303]

Q. Do you remember what you certified to the Surveyor-General was the date of your survey?

A. I believe that certification included the early part of August?

Q. I call your attention to a copy of the plat, for the purpose of refreshing your memory, and will ask you what was the number of days which you took in surveying the sixteen claims for patent?

A. Well, I could not state the exact number of days; as I say, the total time of the work done up

(Testimony of Parker Liddell.)

there was approximately a month.

Q. You certified, however, that the period of the survey was from the first to the 12th of August, 1913, to the Surveyor-General.

A. I certified to the statement that that included the actual work with regard to the patent survey; however, I will make the statement that I did considerable work there at different times prior to the patent survey.

Q. Now you say you spent about two days in surveying these three claims?

A. I should say it was about that; I don't remember exactly what it was.

Q. Then you would say a man who spent about two days and a half in going over your survey, checking it up, and on the ground, had spent a reasonable length of time.

Mr. SPRINGMEYER.—I object to the question as immaterial, and not proper cross-examination.

The COURT.—I will sustain the objection.

Mr. THATCHER.—That is all. [304]

**Testimony of John Jory, for Defendant**

Mr. JOHN JORY, called as a witness on behalf of the defendant, after being sworn testified as follows:

Direct Examination by Mr. SPRINGMEYER.

Q. Your name is John Jory. A. John Jory.

Q. You live near Copper Canyon in Lander County, Nevada, do you not?

A. At the present time.

Q. Where were you born, Mr. Jory?

(Testimony of John Jory.)

A. I was born in England, County of Cornwall.

Q. How many years ago?

A. Sixty-two years, I think, and about nine months.

Q. What has been your occupation during the greater part of your life?

A. Mining, a little mixed with ranching.

Q. When did you begin mining, at what age?

A. It is hard to tell, I suppose about thirteen, thirteen years old.

Q. Where was that, Mr. Jory? A. Cornwall.

Q. In what way?

A. Well, assorting copper irons is where I began first as a small boy.

Q. How long did you work?

A. Oh, perhaps for a year and a half.

Q. Then what did you do?

A. Went in the mines to work underground.

Q. Where was that? A. Cornwall.

Q. How long did you work there?

A. I should say about eight years.

Q. During that time you say you were engaged in mining underground? A. Yes, sir.

Q. Do they mine there in the same way we mine here in the west?

A. Well, not in them days; they are a little farther advanced now then they were then. [305]

Q. Where did you go after that, Mr. Jory?

A. I came to the United States, to New York.

Q. Where did you go from New York?

A. Pennsylvania.

(Testimony of John Jory.)

Q. What did you do in Pennsylvania?

A. Worked in the iron ore mines, and also coal mines.

Q. And after leaving the iron ore and coal mines there where did you go? A. I came to Battle Mountain.

Q. What did you do there? A. I went to Austin to work in a mine.

Q. And after that what did you do?

A. I went from there to White Pine—Treasure Hill, White Pine.

Q. And from there where did you go?

A. To Eureka.

Q. And from there where did you go?

A. To Utah.

Q. After leaving Utah where did you go?

A. I came back to Austin.

Q. And then where did you go, Mr. Jory?

A. I went to California.

Q. To what place in California.

A. To Amador City.

Q. Did you mine there? A. Yes, sir.

Q. And from there where did you go?

A. Came back to Galena in Lander County.

Q. Did you mine anywhere else in California besides Amador City? A. Yes, later on.

Q. Later on you say you returned to California again? A. Later on, yes.

Q. Where did you go then?

A. I went to Sonora, Tuolumne County, California.

(Testimony of John Jory.)

Q. Were you mining in Sonora also?

A. Yes, about eight miles up from Sonora.

Q. After you left Sonora where did you go?

A. I went back to Galena again. [306]

Q. Did you mine there? A. Yes.

Q. How long did you continue mining?

A. In Galena?

Q. Yes.

A. I should say about thirty-six years.

Q. What are you doing at the present time?

A. I am ranching, and mining a little at the same time.

Q. How many years is it since you began ranching? A. What?

Q. Well, I will withdraw that. Do you know the Copper Canyon Mining District in Lander County, State of Nevada? A. Yes, sir.

Q. Do you know the claim in that canyon called the Salt Lake No. 3? A. Yes, sir.

Q. When did you first know that claim?

A. In February, 1897.

(RECESS FOR FIVE MINUTES. AFTER RECESS.)

Q. Mr. Jory, have you located mining claims in your lifetime? A. Yes, sir, many a time.

Q. About how many altogether, if you could give an approximation?

A. I could not tell you how many; I located most of those claims that are in Copper Canyon—the John John, the Lucy.

Q. Never mind about giving the names. Did you

(Testimony of John Jory.)

locate claims in other districts than Copper Canyon during your experience as a miner?

A. Copper Canyon is in Battle Mountain Mining District; I have located claims there in Copper Canyon in Battle Mountain Mining District.

Q. At the time you first knew the Salt Lake No. 3 claim on February 2d, 1897, state what you did?

A. In regards to locating this claim?

Q. Yes, if you did anything.

A. Well, we went to this piece of ground, and found a lode in place, and put a monument on there.

Q. Who was with you at the time?

A. My brother, Joseph Jory, and a young man by the name of William T. Jurey. [307]

Q. What time of the day was it when you located the claim?

A. I should say it would be about noon.

Q. You say you found a mineral bearing lode?

A. Yes, sir.

Q. Describe to the jury just what it was you found?

A. Well, it was quite a large outcrop of mineral-bearing matter sticking up out of the ground; there had been some work done there by people in early days, and they had throwed out a little dump there, uncovering this lode; we placed our monument on this dump, and located this lode.

Q. You said you found a vein; about how big was the vein?

A. I should judge about eighteen inches wide.

Q. What did it contain?

(Testimony of John Jory.)

A. It contained iron and copper stains.

Q. Did it contain anything else in the way of mineral as far as you know, or so far as you can give your opinion?

A. Yes, I should say it contained chloride in the quartz.

Q. You said it contained iron and copper stains?

A. Iron and copper stains.

Q. Did it contain any other mineral outside of the iron?

A. Yes, I should say this quartz would carry gold.

Q. State whether or not in your opinion it would assay?

A. I should say it would, yes, sir.

Mr. THATCHER.—Well, I hardly think he is justified in saying in his opinion it would assay; an assay is a definite and determined thing.

The COURT.—Well, he might state whether he had made any examination to discover any ore—whether he had panned it or assayed it.

Mr. SPRINGMEYER.—(Q.) You never assayed a vein, did you? A. No, sir. [308]

The COURT.—I think you should exhaust the facts before he gives his opinion; if he made an assay, or panning, it if he can state just what the conditions are so the jury can judge, I think he could do so, then after that is done, he can give his opinion as an expert miner.

Mr. SPRINGMEYER.—(Q.) Did you make any tests of the material which you say was a mineral-bearing vein? A. No, sir.

(Testimony of John Jory.)

Q. You didn't make any pannings, then?

A. No, sir.

Q. You didn't have any assays made?

A. No, I never heard of pannings in them days.

Q. You didn't hear of pannings at that time?

A. No.

Q. State whether or not in your opinion at the time you found it, it would carry assay values?

A. I should say it would.

Mr. THATCHER.—Object on the ground he has not shown himself competent to testify that it would carry assay values.

Mr. SPRINGMEYER.—I submit that is a proper question.

The COURT.—Whether it would carry gold or silver—he has not testified that he knew anything about assays.

Mr. SPRINGMEYER.—Perhaps it would be better to put it in that form. (Q.) State whether or not in your opinion as a miner and prospector, it would carry gold and silver? A. I should say it would.

Q. State about how much gold or silver it would carry, in your opinion.

Mr. THATCHER.—Objected to on the same ground, if the Court please; the witness has not shown himself competent to testify how much, even if he can say in his opinion it might carry some.

The COURT.—(Q.) At the time you examined that and made that location, were you competent

(Testimony of John Jory.)

then to give an opinion as to what the value of that rock was?

A. Well, no, I would not say I could; I never had an assay of [309] the rock, consequently I could not judge from looking.

Q. Do you remember now distinctly the appearance of the rock as it was at that time?

A. Yes, sir.

Q. Well, could you say now, simply from what you knew at that time, whether it would carry any values or not?

A. I should say it would carry values.

Q. Could you tell how much?

A. No, I could not tell how much.

Mr. SPRINGMEYER.—(Q.) State the condition of this vein.

A. It was sticking up out of the ground in places, and other places it was worked on, dug down a piece.

Q. How did it look with regard to what was on each side of it?

A. How did the country rock look?

Q. How did the vein look; was it of the same material as the country rock on each side, or not?

A. No, sir.

Q. In what respect was it different?

A. Well, it was ledge matter, and the country rock is country rock, it is different altogether.

Q. Who was with you on the day that you found this ledge matter?

A. My brother, Joseph Jory, and William T. Jurey.

(Testimony of John Jory.)

Q. Before finding this ledge matter what did you do?

A. We went around on the ground, and hunted for a ledge to locate?

Q. When you found the ledge what did you do?

A. Built a monument there.

Q. Did you erect the monument?

A. I helped to erect the monument, yes.

Q. How large was the monument?

A. I should say about four feet high and about two feet through.

Q. What was it made of?

A. Rock and a piece of timber, four by four timber, to the best of my knowledge.

Q. Did you do anything else after you erected the monument. [310]

A. No, sir. I did not, not on that ground.

Q. Did you do anything with regard to notices of location? A. My brother put the notices in.

Q. Where did he get the notices, if you know?

A. I wrote them myself and gave them to him.

Q. Did you write out the full notices, or not?

A. Yes, sir; I didn't fill in the number of feet; I didn't know the distance from there back to the end line.

Q. But you wrote out all except the—

A. (Intg.) All except filling in the amount of feet.

Q. For whom did you make this location, if for any one? A. For J. H. Clive.

(Testimony of John Jory.)

Q. Will you please state what that is, if you know? (Hands to witness.)

A. That is an old notice that I found in the monument in Salt Lake No. 3.

Q. When did you find it?

A. On the 13th day of the present month.

Q. How did you come to find that, Mr. Jory?

A. My attention was drawn to this monument, and I went and looked around, and I dug in the dirt, and I found this notice in a tin can.

Q. Where was the tin can lying?

A. In the bottom of this monument or dirt, where this post was standing.

Q. Was it on the outside or on the inside, or under the monument?

A. It was under the dirt mostly; there was a little bit of the top of the can showing, and I dug down and took it out.

Q. Who was with you at the time?

A. Mr. Joseph Ralph and my brother.

Q. Mr. Joe Jory? A. Joseph Jory, my brother.

Q. State what that is, if you know.

A. That is the old notice [311] that was written by me and placed on the Salt Lake No. 3.

Q. The notice which you testified you gave to your brother Joseph Jory? A. Yes, sir.

Q. Is that in your handwriting?

A. That is my handwriting, yes, sir.

Q. Did you examine that carefully before coming on the witness stand? A. I have.

(Testimony of John Jory.)

Mr. SPRINGMEYER.—I offer it in evidence, if the Court please.

Mr. THATCHER.—No objection.

(Location notice in frame, marked Defendant's Exhibit No. 6.)

Mr. SPRINGMEYER.—Q. Is that the can in which you found the location notice?

A. Yes, sir, that is the can I found the notice in.

Mr. SPRINGMEYER.—I offer that in evidence, if you have no objection.

Mr. THATCHER.—No objection.

(The can is admitted in evidence and marked Defendant's Exhibit No. 7.)

Mr. SPRINGMEYER.—Q. Now, at the time you made this location of the Salt Lake No. 3, state whether or not it was occupied or in the possession of any one? A. No, sir.

Q. Did you go over the ground before making the location? A. Yes.

Q. You said you went over it for some time?

A. Yes.

Q. And looked for a vein? A. Yes, sir.

Q. Did all three of you go for that purpose about the claim? A. Yes.

Q. At the time you located it, did you find any monuments of any other claims? A. No, sir.

Q. Now, did you see this monument at the point of discovery? [312] A. Did I see it?

Q. Yes, after it was built? A. Yes, sir.

Q. And you state that it was about four feet high?

A. About four feet high, yes.

(Testimony of John Jory.)

Q. And there was a post in it? A. Yes.

Q. Did you see the monuments on the end lines and side lines of the claim? A. No, sir.

Q. Did you see them after they were built?

A. One, just one at the lower end on the road where you go to and through, I didn't go around the claim.

Q. Did you go around the claim any time after the monuments were built on the side lines and end lines?

A. No, sir.

Q. You did not? A. No, sir.

Q. When did you see the monument on the lower side of the claim? A. On the lower corner?

Q. Yes.

A. Oh, every day after; I was working there, I would go by this monument to and through to my work and home.

Q. What corner is that?

A. That is the southwestern corner.

Q. When did you last see that monument, Mr. Jory?

A. I seen it on the 13th of this month when I was there.

Q. State whether or not it was in the same position then as it was the first time you saw it?

A. I should say it was.

Q. How often have you seen it since the year 1897?

Mr. THATCHER.—Which monument is that?

Mr. SPRINGMEYER.—The monument on the lower southwest corner.

(Testimony of John Jory.)

Mr. THATCHER.—(Q.) Southwest corner of Salt Lake No. 3.

WITNESS.—Yes.

Mr. SPRINGMEYER.—(Q.) Mr. Jory, how often have you been over this claim since 1897?

A. That is hard to say, hundreds of times, I should say. [313]

Q. You say the monument is in the lower southwest corner, right beside the road? A. Yes, sir.

Q. Would you see this monument whenever you went over the claim?

A. Yes, sir, when I went over the road.

Q. How long did you work in Copper Canyon after locating this claim?

A. I should say nearly two years.

Q. Did you see the claim every day, or almost every day, during that time?

A. I see the ground, yes, sir.

Q. Do you know whether any one was living on the claim at that time?

A. Yes, sir, the company had men living there.

Q. Where were they living?

A. In the company houses.

Q. Where were those houses situated?

A. On the Salt Lake No. 3.

Q. Describe to the jury the character of the houses.

A. Of the houses that were there then?

Q. Yes.

A. Well, there were several sleeping houses around, for the men to sleep in; also the boarding-house and the office, all on Salt Lake number 3, and

(Testimony of John Jory.)

the barn and stable.

Q. Did you live on the claim yourself?

A. I did from '85 to 1897, but not continuously; I had a small ranch that I would go to and through.

Q. Did you live on there after 1897?

A. No, sir.

The COURT.—(Q.) You began living there when? A. In 1885.

Q. And you lived there until what time?

A. I lived there until 1897.

Mr. SPRINGMEYER.—(Q.) What is this paper, Mr. Jory, if you know? (Hands to witness.)

A. This is the notice that was recorded; it is a copy of the same notice that was in the monument; in them days we sent a notice to the recorder to be recorded, and the other we held in the monument; this is the one that was recorded by the recorder. [314]

Q. In whose handwriting is that?

A. That is my handwriting.

Q. When did you write that out?

A. On the second day of February, 1897.

Mr. SPRINGMEYER.—We offer this in evidence.

Mr. THATCHER.—No objection.

The COURT.—What date did you say you wrote that?

A. Second day of February, 1897.

The Notice of Location is admitted in evidence, marked Defendant's Exhibit No. 8, and reads as follows:

**Defendant's Exhibit No. 8—Recorded Location Notice of Salt Lake No. 3.**

NOTICE OF LOCATION.

This is to certify that I, the undersigned, hath this day located and claim 1500 feet on this Lode or Ledge) running in a northerly direction 255 feet from this monument, and in a southerly direction 1245 feet. I also claim 300 feet on each side from centre of Lode with all dips, spurs and angles. This mine is to be governed by the United States and district mining laws and is to be known as Salt Lake No. 3, situated about the houses at Copper Canyon Battle Mountain Mining District, Lander County, Nevada.

Located February 2nd, 1897.

Locator—J. H. CLIVE.

Filed for record Feb. 5th, 1897, and recorded at request of Mr. Clive in Book F, *pp.* 39 of Mining Records, at 20 min. past 11 o'clock A. M. Feb. 6th, 1897.

JOHN MELLANDER,
Dist. Recorder.
By DELLA MELLANDER,

Filed and recorded at request of Della Mellander Feby. 8, 1897, at 25 min. past 3 o'clock P. M. in Book No. 1 at page 353 of Duplicate Mining Notices, records of said Lander County, Nevada.

M. D. MURPHY,
County Recorder. [315]

Mr. SPRINGMEYER—Q. Did you say that the monument on the Salt Lake No. 3 was in the same place when you last saw it as when you first saw it?

(Testimony of John Jory.)

A. I should say so to the best of my knowledge.

Q. Now, you say you have lived in that neighborhood for many years? A. Yes, sir.

Q. And you have been in Copper Canyon, and down the gulch running past this claim, very frequently during that time, have you not?

A. Yes, sir, hundreds of times.

Q. Do you know what the conditions in that canyon are with reference to waterspouts, or actions of that kind?

A. Not during my time there, but later on there was a cloudburst came down there.

Q. Do you know of any of the cloudbursts?

A. Yes, sir, I have seen the water, and I seen the damage it did.

Q. When was one of those cloudbursts, if you recall any of them?

A. Well, I think the worst cloudburst must have been about ten years ago.

Q. Did that do any damage in the canyon?

A. Well, it washed out the road bad in places, carried away part of the old stable that stands in the canyon.

Q. Do you know of any other cloudbursts there?

A. No, I can't say I do, not in that canyon, although there has been cloudbursts, but not very heavy.

Q. Did I understand you to say that the discovery, where you said there was mineral in place, was different from the country rock? A. Yes, sir.

Q. Describe that again to the jury, in what way it was different.

(Testimony of John Jory.)

A. Well, the ledge matter between the country rock forms itself different altogether from the country rock; the place was about this size (showing), ledge matter up from the ground. [316]

Q. Did it seem to be of a different material from the country rock? A. Yes, sir.

Q. State whether it was differently colored or not?

A. Well, it was iron colored, and quartz with chloride mixed through the quartz.

Q. Do you know how the ledge matter dipped?

A. Dip would be east-easterly.

Q. In your judgment as a practical miner and prospector, state whether or not that was a vein?

A. I should say it was.

Q. State whether or not it carried mineral of value? A. Yes, sir.

Mr. SPRINGMEYER.—Cross-examine.

Cross-examination

Mr. THATCHER.—Q. You said you made a discovery, that was the first thing you did up there, was it not?

A. What is it?

Q. You made a discovery? A. Yes.

Q. And you discovered a cut? A. Yes, sir.

Q. The cut was already on the ground, as I understand you. A. That is true.

Q. It was pretty well filled in too?

A. The bottom, yes.

Q. It was a very small cut, as a matter of fact, was it not?

A. Well, a cut, I should say about six or eight feet

(Testimony of John Jory.)

deep, about eight feet long.

Q. That deep and that long, was it?

A. I should say it was.

Q. How much of it was filled in?

A. I could not tell, I didn't go to the bottom of it.

Q. You didn't go down into the bottom of it at all?

A. Not to clean it out, no.

Q. You looked at it, and you didn't notice how much of it was still six feet deep—or had it been six feet deep, in your judgment; I don't want to misunderstand you? [317]

A. I should say it was about six foot deep at this time.

Q. At this time? A. Yes.

Q. Can you tell the jury how much it had been filled in? A. I could not, no.

Q. How old was that cut? A. I don't know.

Q. Been there a long time in your judgment?

A. As far as I know.

Q. How long had you been in there at that time?

A. In the district?

Q. Yes. A. In Copper Canyon?

Q. Yes.

A. Well, since '85, that was about twelve years.

Q. About twelve years in there?

A. Yes, but I had been in the camp a good while before then, but not living there.

Q. That cut was dug before you ever came in there?

A. I think so, I don't remember seeing it dug while I was there.

(Testimony of John Jory.)

Q. You said you found a little vein in that?

A. Yes.

Q. How big was that vein?

Q. I should judge about eighteen inches wide.

Q. Was there any difference between the walls and the vein itself, in the material?

A. This between the walls, it was all ledge matter.

Q. Just tell us what kind of ledge matter.

Q. Well, it was stains of copper, and chloride that would carry gold, I should say, and silver as well.

Q. That is your opinion? A. Yes, sir.

Q. Did you ever pan any of it? A. No.

Q. And never had any of it assayed? A. No.

Q. Never made any tests on it at all except looking at it? None whatever.

Q. Were you ever up to that cut again after you located that ground—I mean within the next week or ten days, two months or [318] three months?

A. No, sir.

Q. When did you ever go back to that cut again?

A. Well, I went back to a cut there when my attention was drawn to this monument.

Q. Well, when was that?

A. That was in February or May, the 24th, 1913.

Q. May 24th, 1913 or 1914? A. 1913.

Q. I don't want you to be mistaken, just think about that; was it May, 1913, or May, 1914?

A. I will refer to my book.

Q. We don't want to make any mistake about that, we will get along better.

Mr. SPRINGMEYER.—Mr. Jory has kept a rec-

(Testimony of John Jory.)

ord of his experiences for many years.

WITNESS.—I will have to put on my specks, I am an old man, you know; I am a little bit filled up in the ears, too—run an automobile too long, I guess. (Looks at book.) May 24th, 1914.

Mr. THATCHER.—I thought so.

A. Yes.

Q. And from February 2d, 1897, when you were on that dump and prepared this location notice, up till 1914, you were never on the ground or at that dump again? A. I wasn't at that dump, no.

Q. Well, that is all I want.

A. I was on the ground.

Q. Oh, yes, I know you were on the ground; you lived there, practically continuously, a good part of the time between '85 and the time you sold out, didn't you? A. Yes.

Q. And then after you sold out you came back and went over the ground at various intervals?

A. Yes, sir.

Q. But from May, 1897, until the time you have last testified, 1913, you never were at that cut again?

A. I was there in 1913.

Q. 1914? A. 1914, yes, sir.

Q. You were there in that cut in 1913? [319]

A. No, I could not find the cut.

Q. You could not find the cut in 1913?

A. No, I wasn't allowed to find it.

Q. What? A. I wasn't allowed to find it.

Q. And when you were at this cut at this time you said you didn't pan it, and you didn't assay it?

(Testimony of John Jory.)

A. No.

Q. As a matter of fact, it was merely your inference that it carried gold, silver and copper, was it not?

A. To the best of my knowledge as a miner.

Q. You stood on top of that and looked six feet down, and you guessed at it, didn't you?

A. Yes, sir.

Q. What was the course of the vein that you found that time? A. Northerly and southerly.

Q. You put up a monument when you did this, did you, Mr. Jory? A. Yes, sir.

Q. Now speaking of the corner monuments on the Salt Lake No. 3, did you put up any of them?

A. No.

Q. You didn't put up any of them? A. No.

Q. How did you know that this southwest corner you have testified to was Salt Lake No. 3, did it have anything on it?

A. What do you mean, at that time, or before?

Q. No, afterwards; you said you saw it any number of times.

A. I seen my brother put it up, and William T. Jurey.

Q. You saw them put that monument up?

A. Yes.

Q. And it remained there in practically the same position, up to the present time? A. Yes.

Q. What was the character of that monument, Mr. Jory?

A. It was built of rock, and a piece of two by four

(Testimony of John Jory.)

nailed together—two two by fours nailed together.

Q. Two two by fours nailed together? A. Yes.

Q. How high was it?

A. I should say it was four feet high. [320]

Q. I think you testified it was four feet high.

A. Yes, sir.

Q. Were you at all the corners on Salt Lake No. 3?

A. No, sir. This one corner I seen, I happened to see that. I was passing up on the road.

Q. You never have seen any of these other corners? A. Not to my knowledge.

Q. What was the monument made out of?

A. Rock, and a piece of four by four lumber.

Q. Did you testify at the former trial of this case?

A. I did, yes.

Q. Before this Court? A. Yes, sir.

Q. In December, 1913? A. Yes.

Q. Did you at that time tell the Court that the monument, the location monument, was two two by fours, or a piece of post?

A. I might have said two two by fours; we nailed up several of them, but I hadn't found the monument at that time.

Q. Did you say at that time it was a wooden post?

A. Yes, I said it was a wooden post.

Q. If you testify that the location monument was a stone monument, would you say your recollection at that time would be better than it is now?

A. No. I have been on the ground since that time, and I would say my recollection now is better

(Testimony of John Jory.)

than it was then; I hadn't been on the ground then.

Q. You hadn't been on the ground then?

A. No.

Q. Did you testify in the former trial of this case—

A. (Intg.) You aren't getting me mixed with Joseph Jurey, are you?

Q. No, you are John.

A. We don't agree on it; he says it is a rock monument, and I say it is a rock monument with a piece of lumber in it.

Q. You and Joe don't agree?

A. No, we don't agree. [321]

Q. As a matter of fact Joe put up the monument?

A. I was there.

Q. You were not there when he put up that monument, were you? A. I was.

Q. Are you sure of that?

A. I am sure of that; I selected the ground.

Q. Isn't it a fact that you prepared this notice, and handed it to Joe, and you went off to locate some other claims?

A. I did after, but I stayed with him until we found this piece of ground to put the notice on.

Q. But you gave him a notice, and left a blank for him to fill in the number of feet?

A. I did, and he was to go through the ground.

Q. And you went off to locate some other ground?

A. Yes.

Q. You didn't stay there until he built the monument, did you?

(Testimony of John Jory.)

A. I did; I stayed there until the monument was built.

Q. Did you see him put the notice in the monument?

A. I could not say as to that, I think I did.

Q. You think you did? A. Yes.

Q. I understood you to testify that you never have seen this from the time you wrote it until the 13th of the present month, is that correct? (Referring to Defendant's Exhibit No. 6.)

A. That is correct.

Q. How long from the date you wrote this one did you next see it? (Referring to Defendant's Exhibit No. 8.)

A. That was about two days before the last trial, at Reno.

Q. In the meantime you had never seen it?

A. I had not seen it, no, sir.

Q. You don't remember whether you saw your brother put it in the monument or not?

A. I am not sure as to that; I know he would have to take it out to put the number of feet on, because [322] the ground hadn't been measured off at the time I left him.

Q. Let me read you something.

Mr. SPRINGMEYER.—Will you be sure it is the right Jory?

Mr. THATCHER.—I know these Jorys; there are Jorys and Jureys, and I know John and Joe, and all of them.

Q. I call your attention to page 21 of the transcript

(Testimony of John Jory.)

of the testimony given in the case of William Lamont, as liquidator, et cetera, versus Guy Davis, J. J. Healey and Murray Scott, tried in this court in December, 1913, and ask you if at that time you testified as follows: "Q. What was the general trend or course or strike of this lode? A. Northerly and southerly. Q. After having made the discovery, what did you then do? A. Well, I trusted to my brother and the other man in doing this work. I went east from there and stepped off the number 4 Salt Lake, and 2. We had five claims to step off that day, and it kept us pretty busy—it was storming. Q. Then you, personally, did not perform any other work upon that Salt Lake number 3? A. No, I did not put up the corners, or build any of the monuments, but I went with my brother and seen the discovery, and told him it was a good place to locate; it was given to me to go out and locate this ground, being an older man, and being there more years. Q. Did you see the monuments erected? A. Yes, sir, I see them after they were erected. Q. You saw them after they were erected? A. Yes. Q. How soon after? A. Oh, right away; we passed them there every day, and they were within sight of where we were going up and down the road, and everywhere there. Q. Did you ever pace them off from the location monument? A. No, I left that to my brother. Q. What was the size of those monuments? A. They were good size; I should judge about four feet high and about two feet through; that would make it about four feet on the round,

(Testimony of John Jory.)

[323] or more than that. Q. You say two feet through? A. Yes. Q. The corner monuments? A. No, the corner monuments were put up, 2 by 4's nailed together, with some rocks placed around the bottom." Did you so testify? A. I think so.

Q. I understand you to say, Mr. Jory, with reference to this discovery, as to whether or not it carried gold, silver, copper or valuable metals, it was merely your guess, from the observation you made from the top of the bank?

Mr. SPRINGMEYER.—I object to the question on the ground it assumes a state of facts not in evidence; he did not use the word guess, or any word synonymous with guess.

Mr. THATCHER.—Well, I will appeal to the record, if it be necessary. I will go on with something else, and the testimony can be looked up at noon.

Q. You say Mr. Ralph was with you when you found this location notice? A. Yes.

Q. Have you been able to read that location notice? A. Just a part of it, not fully.

Q. How much have you been able to read?

A. You can see just what is there.

Q. Suppose for the benefit of the jury, and for my benefit, you read as much as you can of that notice. (Referring to Defendant's Exhibit No. 8.)

Mr. SPRINGMEYER.—Begin right at the top, Mr. Jory. A. There isn't much of it I can read.

Q. If you can't read the words, spell out the letters, if you can decipher them.

(Testimony of John Jory.)

A. Well, I can read "Notice," "This is to certify that I the undersigned"; now the next would be just "ha"; and I will have to jump down to the word partly spelled "situated," but not all there. [324]

Mr. THATCHER.—(Q.) How much of "situated" can you read? A. "Situa."

Q. And what else can you read after that?

A. I can't ready anything more on that line. (Reads:) "At Copper Canyon, Battle Mountain Mining District, Lander County, Nevada. Locator"—part of the "J" is there—"H. Clive."

Q. That is about as much as you can get of it?

A. I can see, I think, "February" down there, but I am not sure.

Q. You are sure that you can? A. No.

Mr. SPRINGMEYER.—Did he say he could see the number 3?

Mr. THATCHER.—No, he said he could kind of decipher February, but he wasn't sure; he didn't say anything about number 3.

Q. How many claims did you locate that day?

A. I think five.

Q. You located a good many of them yourself?

A. I located some with the other men.

Q. You wrote out the location notices in all of those Salt Lake claims, and all the other claims that you located at that time? A. Yes, sir.

Q. Did you write them before you started out in the morning? A. Yes, sir.

Q. And did you put in the names before you started out, leaving the feet blank?

(Testimony of John Jory.)

A. Yes, sir, I think so.

Q. And you located this one, as you recollect, about noon?

A. Somewhere about noon, it might have been a little later.

Q. You said that there was a large outcrop?

A. It cropped out above the ground, that is what I mean by that; it is above the soil, however.

Q. Cropped out above the soil?

A. Above the soil.

Q. You said there was a large outcrop sticking out of the ground?

A. Yes, that is what I mean by that.

Q. How far was this dump from the outcrop? [325]

A. Just below the outcrop.

Q. Just below it? A. Yes.

Q. Can you point out or tell me approximately with reference to anything that is on the claim now, about where this outcrop was—tell me with reference to the mill, or anything else.

A. I can tell you where I found this monument.

Q. No, I am asking you where this dump and discovery was that you made, and where you erected it, do you remember?

A. I remember where I found it.

Q. You don't remember where it was originally?

A. No.

Q. You said a cloudburst came down there?

A. In the main canyon.

Q. About ten years ago?

(Testimony of John Jory.)

A. I should judge—guessing.

Q. That was after the location of the Salt Lake No. 3? A. Yes, sir.

Q. You were not there?

A. I was living there in the next canyon.

Q. Did you come over into the canyon after the cloudburst? A. Yes, sir, several times.

Q. Did you notice and observe how much damage had been done? A. In the canyon?

Q. In the canyon, or the buildings.

A. It had washed out the road considerable, in the turn there in the canyon.

Q. When was this old well sunk on the ground?

A. I could not tell, it was sunk before I came there.

Q. How long a time before you came?

A. Well, I should judge it was sunk back in the early seventies.

Q. You came there in '85?

A. I came to Copper Canyon in '85.

Q. How deep was the well?

A. I was told it was eighty-feet deep. [326]

Q. Did you ever know how deep it was?

A. Not certain.

Q. Was it used for anything there?

A. It was sunk for water.

Q. They never found any water? A. No.

Q. As a matter of fact, they used it to dump manure in for a while from the barn, did they not?

A. I didn't, but I have heard people say it was.

Q. You know that was done? A. Yes.

(Testimony of John Jory.)

Q. You don't know whether you saw your brother put that notice in the monuments.

A. No, I could not say as to that, because he would have to take it out again, and put the number of feet on if he did; he may have packed it in his pocket until he got the claim measured.

Q. Might have put up the monument first—didn't he put up the location monument?

A. He put up a location monument.

Q. Do you want the jury to understand that he put up a location monument, then went around and monumented these corners, and then came back and put the notice in the location monument?

A. I could not swear as to that, what he did do.

Q. You could not swear? A. No.

Q. And are you sure you saw that monument built? A. I am sure I seen the monument, yes.

Q. And you know what it was? A. Yes.

Q. How did you come to make these five locations that day?

A. By orders from the men we were working for.

Q. That is, Mr. Clive?

A. Mr. Clive and Mr. Johnson; Mr. Johnson was in charge at this time.

Q. And they told you to go out and locate five claims? A. Locate this ground.

Q. Did they point out the ground they wanted you to locate?

A. Told us where to locate, and so on—yes, pointed out. [327]

Q. And you and your brother, and the young man

(Testimony of John Jory.)

William T. Jurey went out, and, pursuant to those orders, located these five claims?

A. There was also another man with us; I can't tell his name at present, and I could never think of his name since; that might be mentioned in the first testimony, but I am not sure.

Q. You don't know of your own knowledge, what was done with this original notice, do you, the one you found here?

A. Well, I could not swear that I seen this done; I just know that the notice was put in the monument at the same time, before the claim was—before we left the claim there altogether.

Q. You gave it to your brother?

A. I gave it to my brother, yes.

Mr. THATCHER.—That is all.

Redirect Examination.

Mr. SPRINGMEYER.—(Q.) You said you located five claims on that day at the direction of your employers, Mr. Jory? A. Yes.

Q. Did you discover mineral in place or a vein in each one of the claims before you made the locations?

A. Yes, sir.

Q. You don't know of your own knowledge, whether your brother paced out the distances from the discovery, before he filled in the notices, do you?

A. No, if he did he would have to take it out again to fill the notice in; I could not swear whether he packed the notice in his pocket or placed it in the monument.

(Testimony of John Jory.)

Q. I understood you to say that you had not been able to locate the discovery point positively in your own mind since 1897, is that correct?

A. Since 1897?

Q. Yes.

A. No, that is not correct; I have been able—that is, I would not swear to that being the same place that the monument was erected. [328]

Q. You don't want the jury to understand that the point where you found this can and notice is absolutely the same point, do you, Mr. Jory?

A. It doesn't look so to me.

Q. You said you went there in 1914, and tried to find the discovery point, but you were not allowed to do so? A. Yes.

Q. Explain what you mean by that?

A. I went in an auto up in Copper Canyon, and stopped at the office, got out of the automobile and went around on the grade that is cut there, to refresh my memory of the claim, and when I got close to the mill, Mr. Guy Davis headed me off, and said he wouldn't allow any person on the ground, that the ground was his, and he would not allow no person there, consequently I had to get off.

Mr. SPRINGMEYER.—This is all.

Recross-examination.

Mr. THATCHER.—(Q.) Guy Davis said he would not allow anybody on the ground?

A. Yes, sir.

Q. What date was that?

A. That was November 23d, 1913.

(Testimony of John Jory.)

Q. You didn't tell the Court anything about that the last trial here, did you?

A. No, sir, I did not.

Q. That was before you came down, too, wasn't it?

A. Before I came, yes.

Q. This is the first time you have told the Court anything about that?

A. The first time; I have never been asked the question before.

Q. This is the first time you were ever asked the question? A. Yes.

Q. Did you ever do any work on the Salt Lake No. 3?

A. No, sir, nothing more than fixing pipes, and so on; but I believe that was before it was located.

Q. You have been in there, over that country a long time, back [329] and forth from the Salt Lake No. 3? A. Yes.

Q. Since you have been in there have there ever been mining operations carried on in the Salt Lake No. 3—any mining done on it?

A. Well, I seen the grade of this road, and the grading for a mill; also a shaft sunk down in the southwest corner, in about there somewhere.

Q. How deep was this shaft on the southwest corner?

A. I could not tell the depth; I seen men working there.

Q. You saw them working there? A. Yes.

Q. Do you know how deep it went?

A. No; I don't know as I ever looked down it.

(Testimony of John Jory.)

Q. Have you any idea how deep it went?

A. No, I seen a windlass on it, and I suppose it was some depth.

Q. Other than the road up to the mill, and the excavations for the mill, and the mill—this is prior to September 6th, 1913—were there ever any mining operations carried on that ground?

A. Not to my knowledge.

Q. And you have been in there all the time?

A. Yes, sir, off and on.

Q. During that same period I have spoken of, has the Salt Lake No. 3 ever been worked as a mine?

A. Not to my knowledge, no more than the sinking of this shaft down on the corner, and the excavation for the mill, and the grading of this road.

Q. Has there ever been any sinking of shafts, cuts or excavations for the purpose of getting underground, and developing ore upon the ground?

Mr. SPRINGMEYER.—We object to that as calling for the conclusion of the witness on a point on which he may not positively have knowledge.

The COURT.—If he knows, he can answer. [330]

A. Not to my knowledge.

Mr. THATCHER.—(Q) Not to your knowledge, and you have been in there continuously, practically continuously since 1885. A. Yes.

Q. And you stayed on the ground practically up till 1889? A. Yes, sir.

Q. And at various times from that time until 1912, you were back and forth on the ground, and observed it. A. Yes.

(Testimony of John Jory.)

Q. Copper Canyon is a kind of pet of yours, isn't it?

A. I have lived there a long time, and I hate to see these fellows come around there and take the gold.

Q. You don't want anybody else to take the gold? (No answer.)

(The Court admonishes the jury, and at 12 o'clock a RECESS is taken until 1:30 P. M.)

AFTER RECESS—1:30 P. M.

(All parties present.)

Recross-examination of Mr. JOHN JORY Resumed.

Mr. THATCHER.—(Q.) Mr. Jory, I think you said on that day you located five claims?

A. Yes, sir.

Q. Yourself, William T. Jurey, and your brother?

A. Yes, and there was another man, as I said.

Q. The fourth man was with you?

A. Yes, but I can't recall who he was.

Q. And you located that ground under instructions from Mr. Clive and Mr. Johnson?

A. I don't think Mr. Clive was there, but Mr. Johnson was.

Q. Mr. Johnson was there? A. Yes.

Q. And Mr. Johnson told you where to locate the ground? A. Yes. [331]

Q. And what ground he wanted you to locate?

A. Yes.

Q. That is, before you went out in the morning?

A. Yes.

Q. You described that in your location notice, as near the houses or outhouses? A. Yes.

(Testimony of John Jory.)

Mr. SPRINGMEYER.—I object, if the Court please, on the ground it is not proper cross-examination; I only asked a few questions on redirect, and now he is re-examining him on his cross.

Mr. THATCHER.—Possibly counsel is correct; I would like leave, if the Court please.

The COURT.—I will allow you to do so. Of course your objection is strictly correct, but it is a matter within the discretion of the Court.

Mr. THATCHER.—(Q.) You testified you wrote this, didn't you, Mr. Jory? (Referring to Defendant's Exhibit No. 8.)

A. Yes, sir.

Q. In that you describe it as follows: "And is to be known as Salt Lake No. 3 situated about the houses at Copper Canyon, Battle Mountain Mining District, Lander County, Nevada"; where were those houses?

A. The houses were all south and west from the location.

Q. No, I didn't ask you where they were from the location, but where were they with reference to the ground itself; can you tell the jury where they were —were they in the canyon?

A. They were in the canyon, right in the canyon.

Q. On the edge of the canyon? A. Yes.

Q. And were they on the west side of the canyon?

A. Some, and some on the east side of the canyon.

Q. Some on the east side of the canyon?

A. Yes, sir.

Q. Were there any on the east side of the canyon at that time?

(Testimony of John Jory.)

A. Yes, sir, Rock cabin, and the cabin known as the Emanuel [332] Pierce cabin.

Q. Rock cabin and the Emanuel Pierce cabin?

A. Yes.

Q. All of these lay in the gulch?

A. In the canyon.

Q. None of them lay on the sidehill? A. No.

Q. Were you over the ground in 1913, before the trial of this suit?

A. I went on the grade, when I met Mr. Guy Davis.

Q. At the time when you told us you met Mr. Davis and he told you to get off? A. Yes.

Q. You were up on the grade and the road at that time? A. Yes.

Q. How long had you been there?

A. This man walked up as quick as he could walk, and I drove up in that little Ford machine on the low gear, and there was just that difference in the Ford machine and him; I was there about five minutes.

Q. You didn't make any examination at that time? A. I just walked in and looked, was all.

Q. Did you drive up in the Ford car?

A. No, I stopped in front of the office, and walked up.

Q. And you walked right up, and Mr. Davis right behind you? A. Yes.

Q. And you walked down again?

A. I walked down across the road over the grade.

Q. You didn't say whether or not you found any

(Testimony of John Jory.)

croppings at that time?

A. No, sir, I did not.

Q. Well, did you?

A. Nothing more than was on the grade.

Q. You didn't notice them particularly?

A. No, sir.

Mr. THATCHER.—That is all. [333]

Redirect Examination.

Mr. SPRINGMEYER.—(Q.) Mr. Jory, Mr. Thatcher asked you whether these Copper Canyon claims were pets of yours; have you any interest in any of that property, directly or indirectly?

A. No, sir.

Q. You and your brother own a large ranch, do you not?

A. Well, not a large ranch, a small mountain ranch.

Q. And you own other property?

A. Yes, we own mining property in Willow Creek, not in Copper Canyon.

Q. You sold some claims in Copper Canyon to the present owners, of the so-called Copper Canyon Group?

A. Well, we sold that group, but not to the present owners.

Q. To their predecessors in interest?

A. We sold to Mr. Johnson and Mr. Clive and Mr. Browning; they sold to the present owners.

Q. You have no interest in the outcome of this suit in any way, have you?

A. None whatever, no, sir.

(Testimony of John Jory.)

Q. You said you believed you could identify the discovery point with reference to the Emanuel Pierce cabin, is that correct?

Mr. THATCHER.—He did not so testify.

Mr. SPRINGMEYER.—(Q.) You testified concerning Emanuel Pierce's cabin?

A. Just being such a house there.

Q. Has that anything to do with the discovery point of the Salt Lake Claim?

A. I don't know as it has anything to do with it, only it is the nearest house to the discovery point, or was at that time.

Q. To the best of your recollection, about how far and in what direction from the Emanuel Pierce cabin was the discovery?

A. I should say two hundred feet or more; in a northerly direction.

Q. Are you able to identify the exact point, or not?

[334]

A. Well, I could identify where I found this monument, but I am not certain that that is the point that was located in the first place or not.

Q. You are not certain about that? A. No.

Q. Will you please point out the Emanuel Pierce cabin on this photograph, which is marked Defendant's Exhibit No. 3. (Hands to witness.)

A. Here is the Emanuel Pierce cabin. (Indicating on photograph.)

Q. Will you mark it with a cross. (Witness marks the point as directed.)

(Testimony of John Jory.)

Mr. THATCHER.—Put your initials on there. (Marks with initials.)

Mr. SPRINGMEYER.—(Q.) And as near as you can place it, you say the discovery is about two hundred feet in a northerly direction from that cabin?

A. That is as near as I could say at the present time, yes.

Q. But you have not found the discovery point, and are unable to locate it from your examination, is that a fact? A. Yes, that is what I say.

Q. As I understand you, it may possibly be at this point?

A. It may, yes, where we found the notice, but I am not certain, because things weren't as they should be, as I had in my mind.

Q. Do you know what that is (hands photograph to witness)?

A. Yes, sir, this is a map of the Copper Canyon and the little houses around it, and so on; there are several houses built here, though, since the locations was made.

Q. Are those houses on Salt Lake No. 3 claim?

A. Those houses are all on Salt Lake No. 3; but there is only a part of the mill on there, the east side of the mill; I think the line comes right through the east side of the mill.

Q. From what direction is that photograph taken, from a northerly [335] or southerly direction?

A. I think it is taken from the north down the canyon.

Mr. SPRINGMEYER.—I offer that in evidence.

(Testimony of John Jory.)

Mr. THATCHER.—(Q.) You think this is taken from the north, down the canyon?

A. I could not say, of course, I am not a photographer.

Q. Well, you know the ground up there.

Mr. SPRINGMEYER.—(Q.) This is from the south, is it not?

A. The mill is on the east side, yes.

Q. It is taken from the south, is it not?

A. Of the canyon, yes.

Q. Can you identify the Emanuel Pierce cabin on that photograph? A. Yes, sir.

Q. Will you mark that with a circle in red, and put your initials on it. (Witness marks on photograph as directed.)

(The photograph is admitted in evidence, and marked Defendant's Exhibit No. 9.)

Recross-examination.

Mr. THATCHER.—(Q.) I understand you to say, Mr. Jory, that you don't want to say where upon the ground the location monument of the Salt Lake No. 3 was, that you don't exactly remember, is that right? A. At the present time?

Q. At the present time.

A. Well, no, I don't know where it is at the present time, but I know where this monument is that I found.

Q. But you know where this monument is that you found, where you found it the other day?

A. Yes.

Q. But where it was originally you don't want to

(Testimony of John Jory.)

testify? A. No, I would not want to say.

Mr. THATCHER.—I will ask now that the question be read that [336] the reporter was to look up during recess.

(The reporter reads the following question and answer: "Q. You stood on top of that and looked six feet down, and you guessed at it, didn't you? A. Yes, sir.")

Mr. SPRINGMEYER.—I meant that it was not brought out in direct examination.

Mr. THATCHER.—Oh, in the direct examination he said it was his judgment, or his opinion. In order that there will not be any mistake, I will ask that the two questions preceding that be read.

(The reporter reads the testimony as follows: "Q. And when you were at this cut at this time you said you didn't pan it, and you didn't assay it? A. No. Q. As a matter of fact, it was merely your inference that it carried gold, silver and copper, was it not? A. To the best of my knowledge as a miner. Q. You stood on top of that and looked six foot down, and you guessed at it, didn't you? A. Yes, sir.")

Mr. THATCHER.—Now will you read the question to which objection was made?

(The question is read by the reporter as follows: "Q. I understood you to say, Mr. Jory, with reference to this discovery, as to whether or not it carried gold, silver, copper or valuable metals, it was merely your guess, from the observation you made from the top of the bank?")

(Testimony of John Jory.)

Mr. THATCHER.—Do you understand the question?

A. I would like it to be read again; I didn't know it was for me, I thought it was just for you fellows.

(The reporter reads the question.)

A. Yes, sir.

Q. What was the reason for wanting you to locate five claims at that time, Mr. Jory? [337]

Mr. SPRINGMEYER.—Objected to as immaterial, and not proper cross-examination.

The COURT.—The question may be answered, and if not proper it may be stricken out.

Mr. THATCHER.—(Q.) What was the purpose of having five claims located?

The COURT.—That is, if he knows.

Mr. SPRINGMEYER.—We object on the further ground it calls for a conclusion, and is a matter of hearsay.

Mr. THATCHER.—If you know.

A. I don't know; I didn't order the locating of those claims, I was ordered to do it.

Q. Did you afterwards become the owner of these claims? A. No, sir.

Q. You never became the owner of these claims?

A. No.

Mr. THATCHER.—That is all.

Redirect Examination.

Mr. SPRINGMEYER.—(Q.) You were working for wages at that time, were you not?

A. I was working for wages, yes, sir.

(Testimony of John Jory.)

Q. How did you examine the discovery at the time?

A. At the time I made the location?

Q. Yes, sir. A. Yes.

Q. You examined the discovery at the surface as well as down in the cut?

A. I didn't go down into the cut.

Q. Did you examine it at the surface?

A. At the surface, yes; the croppings projected above the surface.

Q. That was the examination you made?

A. Yes.

Q. And the testimony you gave as to the mineral-bearing character of the vein referred to what you saw on the surface as well [338] as what you saw looking into the cut, did it? A. Yes, sir.

Q. Under similar circumstances would you make a location of that kind again, as a practical miner and prospector?

Mr. THATCHER.—Objected to on the ground it is immaterial.

The COURT.—You can ask him with reference to that particular time.

Mr. SPRINGMEYER.—(Q.) Would you at that particular time have done so?

A. I would if I was to have it myself.

Mr. SPRINGMEYER.—That is all.

**Testimony of Joseph Jory, for Defendant.**

Mr. JOSEPH JORY, called as a witness on behalf of the defendant, after being sworn, testified as follows:

(Testimony of Joseph Jory.)

Direct Examination by Mr. SPRINGMEYER.

Q. Mr. Jory, I suppose you were born in Cornwall, England, the same place your brother was born? A. Yes, sir.

Q. When did you come to the United States?

A. In 1878 I landed in Battle Mountain.

Q. Did you ever do any mining in England?

A. Well, I did mine a little in England; I was raised on a farm until I was about fifteen years old, and I probably worked in a mine six months prior to coming to this country.

Q. Where did you go after coming to the United States?

A. I went to Battle Mountain, State of Nevada; came there to Galena, to where my two brothers were.

Q. Did you do any mining at Battle Mountain and at Galena? A. At Galena I did, yes.

Q. About how many years of your life have you spent in mining?

A. Well, off and on, about thirty years. [339]

Q. Have you located any claims during that time?

A. Yes, quite a number.

Q. In different districts?

A. Principally in the Battle Mountain Mining District. Colorado, I located some in Telluride, San Miguel County—prospected there all one summer.

Q. Did you work as a miner in any mines during your thirty years' experience? A. Oh, yes.

Q. In what way?

A. Well, I worked on a timber gang, and with a

(Testimony of Joseph Jory.)

machine, a single hand and double hand.

Q. From the muck-stick up, as the miner says, is that it?

A. Yes, I never done much mucking, though.

Q. Do you know the Copper Canyon Mining District in Lander County, Nevada? A. Quite well.

Q. Do you know the Salt Lake No. 3 claim?

A. Quite well.

Q. And the Midas and Evening Star claims?

A. Well, I am not much acquainted with the Midas and Evening Star claims.

Q. When did you first know the Salt Lake No. 3 claim? A. In 1897, on the 2d day of February.

Q. What did you do on that day?

A. I went out with my brother and William T. Jurey, and some other man, I don't know the name of the other man, to locate some claims.

Q. Did you locate the Salt Lake No. 3 claim on that day in connection with other persons?

A. Yes, sir, I did.

Q. About what time of the day did you locate it?

A. Well, I don't just know whether it was in the morning—my brother testified about noon, but I could not really be accurate in that.

Q. What did you do before you located the claim?

A. Well, we first had to discover a place where there was a ledge [340] if possible.

Q. Did you have any trouble in doing that?

A. Well, I don't know that we had much trouble, no.

Q. Did it take you some time or not?

(Testimony of Joseph Jory.)

A. Not very long, no.

Q. How many of you were there looking for a place on which to make a discovery?

A. There were four of us.

Q. Were you all together there at the time you made the discovery? A. I believe so, yes.

Q. Did you find anything on which to base a location? A. Yes.

Q. What did you find?

A. Found a ledge in place.

Q. About what was the size of it?

A. Well, I would judge maybe a foot to eighteen inches wide.

Q. And what sort of material was it?

A. In what sort of material?

Q. What sort of material was the vein?

A. Well, it was iron, and some porphyry—not porphyry, but gold-bearing rock, or ore it looked to me.

Q. Were there any stains in it?

A. Yes, iron stains.

Q. Was it the same, or different from the surrounding country rock?

A. Well, it would be different from the surrounding country rock, or it could not be a ledge.

Q. But was it different from the surrounding country rock? A. Yes, sir.

Q. Could you see the walls? A. Two walls.

Q. Plainly? A. Yes, sir.

Q. Do you know what the dip of the vein was, in what direction the vein dipped?

(Testimony of Joseph Jory.)

A. Easterly, and running northerly and southerly. [341]

Q. In your opinion as a miner and prospector did it carry sufficient minerals to warrant making a location of a mining claim? A. Yes, sir.

Q. Do you think it carried values in gold or in metal or mineral?

A. To my judgment as a miner, yes.

Q. At that time you were in the employ of someone, were you not?

A. For J. H. Clive and Johnson.

Q. If you were prospecting in your own behalf, state whether or not you would make a location on such a discovery as you say you made there in the year 1897. A. I would.

Q. After you made the discovery what did you do?

A. We built the monument up.

Q. How big a monument did you build?

A. About four feet high and two feet through.

Q. What did you build the monument of?

A. Rock.

Q. At what point did you build the monument?

A. Well, out on a little dump that had been made there.

Q. Was that right at the point of discovery of the ore?

A. Well, I would judge about eight or ten feet from the discovery of the ore that we made.

Q. After you made the monument what did you do? A. Then we paced off our ground.

Q. Who paced it off?

(Testimony of Joseph Jory.)

A. William T. Jurey and myself.

Q. You said there were present when you made the discovery yourself, and your brother, and William T. Jurey, and another man?

A. Some other man, I don't remember his name.

Q. What did your brother do while you and William T. Jurey paced off the distances?

A. They went off to locate some more claims, in a northerly direction, I believe, up the canyon.

Q. Did you build any monuments on the boundaries of the claim? A. Yes, sir. [342]

Q. Where did you build them?

A. On all the corners and center.

Q. Side centers? A. Side centers.

Q. How large were those monuments?

A. They were four feet high.

Q. What were they made of?

A. We had two two by fours nailed together this way (showing), and rocks put around at the bottom.

Q. Did you mark any of the monuments?

A. Yes.

Q. How did you mark them? A. Northeast.

Q. Depending upon what corner or position of the claim they were in, is that correct?

A. Yes, that is right.

Q. Did you mark the name of the claim on the monuments?

A. I don't know as to that—the name of the claim on the monuments.

Q. But you marked the corners, did you?

A. Oh, yes.

Q. Directions? A. Direction.

(Testimony of Joseph Jory.)

Q. After you paced off the distances did you do anything with reference to a location notice?

A. My brother handed me a notice already filled out with the exception of the distances between the several corners and location monument.

Q. Did you do anything with reference to filling in those distances? A. Yes.

Q. When did you do that?

A. I put the paper in my pocket; after we built the monument I started to pace out, and when I walked to one corner I would mark it in on this location notice, and so on until I got the full claim in.

Q. Then you paced out the distance before you filled them in on the location notice, is that true?

A. I had to do that.

Q. Well, what did you do with the location notice?

A. Brought it back.

Q. What did you do with it?

A. I put it into a little can, and [343] put it in the discovery monument.

Q. Will you please examine Defendant's Exhibit number 6, and state whether you have seen that before. (Hands to witness.) A. Yes, sir.

Q. Have you examined it prior to coming into court? A. Yes.

Q. When did you first see that?

A. On the 13th day of the present month, I believe.

Q. Did you ever see that before the 13th day of the present month, to the best of your recollection?

A. That looks like the notice I put in the can, and the can in the monument.

(Testimony of Joseph Jory.)

Q. You examined the handwriting on that as well as you could before coming into court?

A. Yes, sir.

Q. As near as you can say is that the original location notice you posted on the Salt Lake No. 3 discovery? A. Yes, sir.

Q. You say you filled in the distances, and that your brother wrote the rest of the writing?

A. Yes, sir.

Q. For whom did you make that discovery?

A. For J. H. Clive.

Q. Who was he?

A. He was there running the Copper Canyon property at that time.

Q. Examine Defendant's Exhibit number 7, and see whether you know what that is? (Hands to witness.)

A. Yes, sir; that is the can that that notice came out of on the 13th day of this month.

Q. Where did you see the can and notice on the 13th of the month?

A. I didn't catch your first word, Mr. Springmeyer.

Q. I say where did you see the can and the notice on the 13th of May?

A. On the Salt Lake No. 3; on the claim, the Salt Lake No. 3.

Q. Who was with you at the time?

A. My brother and Mr. Ralph. [344]

Q. At what point on the Salt Lake No. 3 did you find the notice in the can?

(Testimony of Joseph Jory.)

A. In the northern part of the claim.

Q. How did you come to find it?

A. Well, I didn't find it.

Q. Did you see it just after it was found?

A. Yes, sir.

Q. Who found it?

A. My brother found it.

Q. Do you know where the original discovery of the Salt Lake No. 3 was? A. No, I don't.

Q. Have you been on the claim since 1897?

A. Yes, sir.

Q. How often? A. I have been there twice.

Q. Did you work for your then employer after you located the Salt Lake No. 3 claim—did you work for Mr. Clive after you located the Salt Lake No. 3 claim? A. Yes, sir.

Q. How long? A. About two years.

Q. Where did you live during that time?

A. At Willow Creek; about a month before I quit I was living at Copper Canyon.

Q. At what part? A. In the canyon there.

Q. Were you living on the Salt Lake No. 3?

A. Well, I don't believe it was; I think it was outside the end line, the western end line of the Salt Lake No. 3, in the side hill, in the cabin.

Q. Do you know whether any men were living on Salt Lake No. 3 during that time? A. Yes, sir.

Q. About how many men?

A. Well, I could not tell how many men, quite a number of men working at the mine, and it was the only place they could live, is right along Salt Lake

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(Testimony of Joseph Jory.)

No. 3, where the houses were.

Q. After you located the Salt Lake No. 3 did you see the location monuments at any time? A. Yes.

Q. How often have you seen them since you located the claim?

A. The corners, you mean, of Salt Lake No. 3? [345]

Q. Yes. A. Oh, quite often.

Q. State whether or not they were the last time you saw them in the same position as they were at the time you located the claim?

A. Approximately, I would say, in the same position.

Q. Do you know the southwest corner of the claim pretty well? A. Yes, sir.

Q. That monument is right by the road, isn't it?

A. About twelve feet, I would judge, maybe fifteen, in an easterly direction from the road.

Q. I suppose you have passed over that road a great many times in the last fifteen or sixteen years, have you not?

A. Yes, hundreds of times, I guess.

Q. State whether or not that monument is in the same position as it was when the claim was located in 1897.

A. Yes, sir, approximately in the same place.

Q. Now, can you describe about where the discovery of the Salt Lake No. 3 was, Mr. Jory?

A. Can I describe?

Q. Yes; can you describe the point of discovery of the Salt Lake No. 3?

(Testimony of Joseph Jory.)

A. Why, no, not particularly, I could not describe it now.

Q. At the time you paced the distances from the discovery, were you accurate and exact in the stepping off, or not?

A. Just like every other man paces out for claims; just go one pace and call it three feet, I believe.

Q. You just stepped it off once in each direction, didn't you? A. Yes, sir.

Q. Then you filled in the distances? A. Yes.

Q. Do you know the Emanuel Pierce cabin in the gulch on the Salt Lake No. 3 claim?

A. Yes, sir; but it is not exactly in the gulch, I would not say; I would say it is up on raising ground it is a little from the bed of the creek. [346]

Q. Are you able to tell the Court and jury approximately where the discovery was with reference to the Emanuel Pierce cabin?

Mr. THATCHER.—He has said twice already, if the Court please, that he didn't know where the original discovery was. Until we find out that he knows where it is, how can he be asked to locate it with reference to the Emanuel Pierce cabin?

Mr. SPRINGMEYER.—I think that may enable him to do so.

The COURT.—I will allow you to ask the question, but you are cross-questioning your own witness.

Mr. SPRINGMEYER.—You may answer the question.

A. I would judge about two hundred and twenty-five or fifty feet in a northerly direction.

(Testimony of Joseph Jory.)

Q. Did you ever try to find the discovery point after you located the claim? A. Yes.

Q. When? A. On the 24th of May, 1914.

Q. What did you do at that time?

A. I went there and found an old post by the side of some rocks, out from an open cut.

The COURT. (Q.) When did you say that was?

A. The 24th of May, 1914.

Mr. SPRINGMEYER. — (Q.) Do you know whether or not that was the discovery you made of the Salt Lake No. 3? A. I don't think it was.

Q. Do you know whether or not the point at which you found the notice in the tin can on the 13th of May was the discovery point?

A. I don't think it was.

Q. You say you and your brother have lived on a ranch at Willow Creek ever since you went out of the employ of the company in 1889. A. Yes, sir.

Q. Have you been through Copper Canyon a number of times since that?

A. Yes, sir, hauling hay over there, and potatoes, and chickens and turkeys and eggs from the ranch. [347]

Q. Did you see whether there were any people living on the Salt Lake No. 3 when you were on the claim?

A. Yes, sir, quite a number of times.

Q. Were you ever there at any time when there were no people living on the claim?

A. No, sir, there was always a man or two there.

Q. Do you know what the condition of the gulch is

(Testimony of Joseph Jory.)

along the road as to having boulders or wash, or anything else in it?

A. Wash; there is wash and boulders in the road, yes.

Q. Do you know whether there were any cloudbursts or waterspouts at any time in the mountains or hills near the canyon?

A. Yes, there has been.

Q. Do you remember any of them?

A. I do, one in particular.

Q. When was that?

A. It was about nine or ten years ago; I could not say just the year.

Q. Was that a large or a small cloudburst?

A. It was quite a large cloudburst.

Q. Do you know whether it did any damage in the canyon? A. Yes.

Q. What did it do in the way of damage?

A. Washed out the road in quite a number of places, the road that we used to travel to and from Galena to Copper Canyon.

Q. Do you know whether it did any harm to the buildings in the canyon, or the pipe-line?

A. Well, I could not exactly say as to that, as regards the pipe-line; but it washed out the end of the barn down there; there is a kind of "linney" roof on the barn—we call it that, it may not be, but we call it a "linney" roof; l-i-n-n-y maybe would answer the spelling of it; and it washed that part out, that being near to the lowest part of the [348] gulch.

Q. Would a waterspout or cloudburst of that kind

(Testimony of Joseph Jory.)

be sufficient to fill up holes, and carry away monuments, or not?

A. Well, they have carried away cocks of hay over in Willow Creek for us; I expect they would carry other things away in their way.

Q. Do you recall any other waterspouts or cloudbursts in that canyon?

A. There is always some there every year, small ones; and, in fact, all around that part of the country.

Q. How many years prior to locating the Salt Lake No. 3 claim were you in the Battle Mountain Mining District?

A. I came down from Butte, Montana, in 1896.

Q. Were you familiar with the district rules and regulations of the Battle Mountain Mining District in 1897? A. Yes, sir.

Q. Do you know whether there were any district rules and regulations requiring any discovery work on claims? A. I do.

Q. Were there such rules that required any discovery work or not? A. No rules.

Q. Do you know what Defendant's Exhibit No. 8 is? (Hands to witness.)

A. That is a copy of the notice I put in the monument.

Q. That is a copy of the notice? A. Yes, sir.

Q. Do you know what was done with that, of your own knowledge? A. This?

Q. Yes.

A. It was sent to Austin, I guess, to get it recorded.

(Testimony of Joseph Jory.)

Mr. SPRINGMEYER.—You may cross-examine. [349]

Cross-examination.

Mr. THATCHER.—(Q.) This southwest corner of Salt Lake No. 3, that was right down here, wasn't it (indicating on Exhibit "A"); that would be the southwest corner?

A. Yes, sir, if that is standing northerly and southerly.

Q. If this is north, this south, this east and this west? A. Yes, sir.

Q. And you passed that monument a good many times? A. Hundreds of times, yes.

Q. It has remained there all the time?

A. It has what?

Q. It has remained there all the time?

A. Approximately there.

Q. Approximately right there? A. Yes.

Q. That is down right near the road, isn't it; it can be very easily seen from the road?

A. I would judge about ten or twelve feet in from the regular course of the road.

Q. And the canyon follows right down with the road? A. Yes, sir.

Q. The canyon is rather narrow at that particular point, so it is easily seen as you come down?

A. Yes.

Q. Now, you said you don't remember where the discovery was made, but you do remember that you found a vein there in a little cut, that is right?

A. Yes, sir.

(Testimony of Joseph Jory.)

Q. The cut was somewhat old, wasn't it; it was there when you got there?

A. The cut was made by some other parties prior to us locating this claim.

Q. The cut wasn't made by you, but it had been made some years before? A. Yes, sir.

Q. And at the time you made the location do I understand the fact to be that it was filled in, pretty well filled in? [350]

A. Well, I don't know, pretty well filled in, with a cut going down here, and as it comes up here, so it comes up to the surface again each way, this being the deepest place—we would call that the deepest place of the cut, and as it comes up this way it would raise out on top of the ground again.

Q. Was it kind of washed down into that cut?

A. What washed down?

Q. The gravel.

A. Oh, there is always from year to year more or less caving in, as the frost goes out of the ground.

Q. This cut was an old cut? A. Yes.

Q. It was there when you first came into the district in 1885? A. Yes.

Q. And remained there all the time? A. Yes.

Q. And when you went out you were directed by Mr. Clive to go out and locate this ground, or by Mr. Johnson on his behalf?

A. Yes, Mr. Johnson and Mr. Clive.

Q. And you went out and located the ground?

A. Yes.

Q. You found a vein there exposed in the cut?

(Testimony of Joseph Jory.)

A. Yes.

Q. Was it exposed lengthwise or otherwise?

A. The vein?

Q. Yes. A. It was exposed lengthwise.

Q. The cut ran along the vein itself? A. Yes.

Q. And you could see it in the bottom?

A. Of course you could see it in the bottom.

Q. Or was it up in the face of the cut that you could see it? A. And the face as well, yes.

Q. How high a face was that cut? Do you remember? A. About four or five feet high.

Q. A four or five foot face?

A. It may have been six or seven but I would judge approximately about four or five feet high.

Q. You didn't go down into it at the time you discovered it? [351] A. No.

Q. And you didn't clean it out?

A. Didn't clean it out; but I walked over to the end where the cut comes up, and you would not have to go in to ascertain whether it was a ledge or not.

Q. You could see it?

A. You can walk along up in here and see it (indicating); it is right in sight.

Q. Walk right along the side of it and see the whole business? A. Yes.

Q. You didn't assay that cut?

A. Never assayed it.

Q. Never took any assays and didn't pan it?

A. Panning—we didn't know what panning was in those days.

Q. You didn't make any test of anything in that

(Testimony of Joseph Jory.)

cut, merely relied on your general experience as a miner, as to whether that was a ledge?

A. General experience as a miner that it was a ledge, and from rock I had seen prior to and after.

Q. On the experience you had in that district?

A. Yes, sir.

Q. And based on that experience, you called that a ledge, and your inference was that it would carry values, is that right? A. Carry values, yes, sir.

Q. But you never made any assays—did you ever do any work on that ground, on that cut?

A. No, sir.

Q. And no one else ever did either, did they?

A. As to that, I don't know.

Mr. SPRINGMEYER.—I object as calling for the conclusion of the witness.

Mr. THATCHER.—I will get around to that, he says he don't know. (Q.) As far as you know, though, no one ever did? A. On that claim?

Q. No, on that cut, in that particular cut? [352]

A. Not at that time, as far as I know, no.

Q. As far as you know, nobody ever did any work there, and you have been in and out of that district for a number of years, have you not?

A. Yes, sir; for at least twenty years.

Q. And in and over this ground?

A. Over this ground, and in all the other ground around there.

Q. You are pretty familiar with the workings that have been going on there, you have kind of kept in touch with Copper Canyon, have you not, Mr. Jory?

(Testimony of Joseph Jory.)

A. Yes, being close to the ranch, I used to haul stuff over there to sell, and go over there once in a while.

Q. Sold the boys hay and vegetables?

A. Sure, and turkeys as well.

Q. And over that ground since you have been in there, has there ever been any mining development work done on the Salt Lake No. 3, which you, as a miner, call mining? A. Graded a road there.

Q. Graded a road?

A. Excavated out for a mill, partly on Salt Lake No. 3.

Q. Yes.

A. Is this prior that you are speaking of, to our location, or to the present time.

Q. No, I am talking about from the time of your location up to September, 1913, was there ever any mining done on that ground?

A. This grade was made, as I said before, and excavation for a mill.

Q. And excavations for the mill?

A. Part on the Salt Lake No. 3.

Q. It is a fact, however, that no shafts or tunnels, or cross-cutting was ever done upon that ground?

A. At the lower end of the ground there was a shaft sunk, yes.

Q. Do you know how deep that shaft was?

A. I don't know how deep it was. [353]

Q. Who sunk that shaft?

A. Well, I have seen Joe Jurey there putting up a windlass, and I don't know if Fred Barnes was on

(Testimony of Joseph Jory.)

the ground working or not, but I see him down below.

Q. Fred was in and around that place? A. Yes.

Q. That was done in 1913, wasn't it?

A. Just on or around there.

Q. Or around July of that year?

A. Or around that.

Q. Did you go on that shaft?

A. Never was over to it.

Q. Do you know whether that was done under the direction of Mr. Ralph? A. I presume so.

Q. He was in charge at that time, was he not?

A. He was at that time.

Q. Outside of the excavation for the mill or grading out for the road, which were both done in 1912, and the sinking of this shaft down in the southwest corner of the claim, that is the only mining that was ever carried on on the Salt Lake No. 3 from the time you first located it until 1913?

A. There were a lot of houses put up there; of course, that is not mining.

Q. You don't consider that mining?

A. Well, blasting out for grading, sometimes you have to use a little powder to grade up, yes, sir.

Q. As a miner you would not call that mining?

A. No, sir.

Q. This road was built up to the mill for the purpose of taking supplies up there, was it not?

Mr. SPRINGMEYER.—Objected to as calling for the conclusion of the witness.

Mr. THATCHER.—If he knows—do you know?

A. I have seen supplies hauled on that road.

(Testimony of Joseph Jory.)

Q. The road stops when it gets to the mill, does it not? A. The road did you say?

Q. Yes, does it stop when it gets to the mill, or does it run [354] right around the mill?

A. I could not answer that; it may go beyond the mill.

Q. I don't want to ask you anything you don't know; just tell me if I question you about anything you don't know, and I will quit.

A. All right, I won't answer if I don't know, but it would strike me the road had to extend beyond the mill in order for a man to turn his teams around to come back on the road again, or to come around to some other place, it would look reasonable.

Q. Yes, I guess you are right about that. You are not able to locate this point where that discovery was; it is sixteen or seventeen years ago, and you don't remember where it was?

A. About eighteen years ago.

Q. But you don't think you are able to locate the old original point of discovery on the Salt Lake No. 3?

A. Not the way the ground is at the present time.

Q. It has kind of passed out of your recollection, and there have been some changing conditions that have changed it, so far as you are concerned?

A. There has been on that ground some changed conditions, yes.

Q. The monument which you put upon the ground when you put the notice there, as I understand it, was a stone monument? A. Yes, sir.

(Testimony of Joseph Jory.)

Q. That is your idea of what the location monument was? A. Yes.

Q. You and your brother don't agree on that exactly?

A. Well, no, I have talked with him about it, and he says he is right and I say I am right.

Q. You put it up, didn't you?

A. I helped put it up.

Q. He went off locating this other ground?

A. He may have helped to do the monument, too, for all I know. [355]

Q. For all you recollect?

A. Yes, sir, at that time.

Q. It was a long time ago, wasn't it?

A. Quite a while.

Q. It was built on a dump, I think you told us.

A. On a little dump.

Q. And William T. Jurey was with you?

A. William T. Jurey was with us, yes, sir.

Q. You said another man was along? A. Yes.

Q. You don't remember who he was?

A. I could not recall his name.

Q. You didn't tell us that on the other trial?

A. I didn't remember.

Q. You could not say who that man was?

A. I don't remember.

Q. You would not want to say, Mr. Jory, that is the location notice of the Salt Lake No. 3? (Referring to Defendant's Exhibit No. 6.)

A. Well, it is in my brother's handwriting.

Q. Well, you located five claims that day and

(Testimony of Joseph Jory.)

you have located other claims around there, and your brother used generally to write out the notices, didn't he?

A. At the time we were working there and located these five claims, I believe he wrote the notices.

Q. When you located any other ground in there, did he generally write out the notices?

A. I could not answer that.

Q. You don't remember that? A. No.

Q. These five claims you located on that day, he wrote out all the notices at that time? A. Yes.

Q. You would not want to say from looking at that notice, that was a location notice of the Salt Lake No. 3, would you, for sure?

A. Yes, sir, I would say that for sure.

Q. You would? Well, on what do you base that? Will you read it to me; go over to the light and see how much you can read of it. [356]

Mr. SPRINGMEYER.—When you can't read the whole word, spell what you can.

A. (Reading.) "Notice to"—"I here certify" "the"—there is some more words there I can't really make out. "Situa" "at Copper Canyon, Battle Mt. Mining District, Lander County, Nevada. Locator"—I think I can see the "or"—"H. Clive."

Mr. THATCHER.—(Q.) You only identify this can as being the can in which that notice was found; you don't remember this can as the can in which the Salt Lake No. 3 location was put, do you?

A. No, sir; only in those years we used to have

(Testimony of Joseph Jory.)

little cans of that size with baking powders in them, of that size.

Q. Baking-powder cans about that size, and that kind of brings it back to you?

A. Yes, it may have been one of those.

Q. Probably might have been any number of notices all put in the same kind of can? A. Sure.

Q. Might use the same kind of cans for all of them? A. Yes.

Q. Just like they use a "Prince Albert" can for staking notices now?

A. Yes, sir, you are right there.

Q. This was in February, 1897, when you made this location?

A. Yes, the second day of February?

Q. It was storming at that time, on that day, was it not? A. Well, a little cold.

Q. Wasn't it storming that day?

A. Storming a little, yes, and a little cold; I remember Billy Jurey and I was pacing off this Salt Lake No. 3, and when we got opposite his cabin we made a mark, and went in and had a drink of whiskey out of a bottle he had there—I remember that.

Q. You noted it at that time?

A. Yes, it was a little cold.

Q. Had it been storming in the canyon before that? A. Oh, yes, a little.

Q. Some snow on the ground at that time? [357]

A. I don't remember the snow part.

Q. You don't remember whether there was any snow? A. No, sir, I don't.

(Testimony of Joseph Jory.)

Q. Have you gone to all of the monuments since the claim was monumented—have you been to all of them? A. Yes, sir.

Q. Lately? A. Well, not lately, no.

Q. How late; when was the last time you were up there, that is, to see the monuments?

A. Well, probably a month and a half or two months ago.

Q. A couple of months ago, and you know where the monuments on the Salt Lake No. 3 are?

A. Yes, sir, approximately.

Q. Well, are they about in the same position as they were when you first located the claim?

A. Yes, sir.

Q. How much would you say they would vary, if at all? A. That I could not answer.

Q. Well, would you say they were within a few feet? A. Approximately a few feet, yes, sir.

Q. They had not been changed more than a few feet, one direction or another, from where they were originally put when you located the ground, can I understand that? A. I believe so, yes.

Q. I can be satisfied with that; that is, these various corners as they stand now upon the ground are practically in the same condition as they were, and the same point on the ground that they were when you monumented the ground?

A. Approximately, yes, sir.

Mr. THATCHER.—That is all.

(Testimony of Joseph Jory.)

Redirect Examination.

Mr. SPRINGMEYER.—(Q.) Mr. Jory, in addition to the improvements that have been made on that claim since the year 1897, that [358] you testified to, state whether or not any buildings have been erected? A. Since we located the claim?

Q. Yes. A. Yes, sir.

Q. What sort of buildings?

A. Bunk-houses and cook-houses—office.

Q. Now on this location notice you can distinguish number 3, can you not?

A. Yes, sir, number 3.

Q. And on the line above that you can distinguish the word "Salt," can you not?

A. Let me look at that a minute (referring to Defendant's Exhibit No. 6); well, I see something there, but I could not say whether that is "Salt."

Q. Can you see a "t"?

A. I can see a "t," yes; it looks like a "t."

Q. So far as the writing is concerned, you identify that as your brother's handwriting, do you?

A. I do; yes, sir.

Mr. SPRINGMEYER.—That is all.

Mr. THATCHER.—I forgot to ask a question.

Q. You said that the men who worked at the mine lived on the Salt Lake No 3, what mine did you mean?

A. I mean the Copper Canyon Mine; there was only one mine there at that time, you understand.

Q. That wasn't either of these three claims; you meant the men who worked at the Washington, the

(Testimony of Joseph Jory.)

Virgin Shaft, and the various other places up the hill at the Copper Canyon Mines?

A. Well, they worked all around in different places there; I know I have myself worked often outside of those places you are speaking of.

Q. That is what I say, you worked at other places?

A. Other places belonging to that group of mines.

Mr. THATCHER.—That is all. [359]

Mr. SPRINGMEYER.—I would like to ask you a few more questions.

Q. In answer to Mr. Thatcher you stated that the corner monuments might have been moved; now you don't mean to say that they were moved, do you?

A. No, sir, I don't; I says approximately—in the same place.

Q. They may be now in exactly the same place as they were in 1897, may they not? A. Yes.

Q. So far as you can tell?

A. They may be, sure.

Q. When you went into the canyon in 1885, you didn't see this cut on Salt Lake No. 3, did you?

A. 1885?

Q. Yes. When you went into the canyon in 1885, you didn't see this cut on Salt Lake No. 3 at which you made the discovery?

A. 1897; I didn't see that cut there in '05.

Q. You saw it in 1897? A. Yes.

Q. Was that the first time you saw it?

(Testimony of Joseph Jory.)

A. There wasn't no cut there in—1897, did you say?

Q. Yes; I thought you said at the place where you made the discovery there was a little cut, filled in partly, an old cut. A. Yes.

Q. When was the first time that you saw that cut?

A. When we first made a discovery.

Q. You don't know how many years it had been there before you made the discovery, do you?

A. No, sir, I don't.

Mr. SPRINGMEYER.—That is all.

By Mr. THATCHER.—(Q.) It had been there quite a while, hadn't it? A. I could not tell that.

Q. You told us before you thought it had been there ever since you were in the district, or was I mistaken?

A. I never had an occasion to go there prior to putting this location notice up, to know or not. [360]

Q. Well, based on your experience as a miner, and your observation of cuts, and things of that kind, would you say that was an old cut,—been there a considerable length of time?

A. It had been some time, I could not say just exactly.

Q. Who owned that ground before you located it for Mr. Clive?

A. No one, to the best of knowledge.

Q. Didn't you and your brother own it once before, and let it run out?

A. Not that particular ground, no.

(Testimony of Joseph Jory.)

Q. You don't remember?

A. Not that I know of, my brother might be able to answer that more clearly than myself.

Q. I may be wrong about that. That is all.

Mr. SPRINGMEYER.—(Q.) You had never made a discovery before at this particular place, had you, Mr. Jory? A. No, sir.

Mr. SPRINGMEYER.—That is all. [361]

**Testimony of Joseph Jurey, for Defendant.**

Mr. JOSEPH JUREY, called as a witness on behalf of the defendant, after being sworn, testified as follows:

Direct Examination by Mr. SPRINGMEYER.

Q. Your name is Joseph Jurey? A. Yes.

Q. You have a brother named William Jurey?

A. William T. Jurey; yes, sir.

Q. Where were you born?

A. I was born in England.

Q. In Cornwall? A. Yes.

Q. And was your brother born there also?

A. Yes.

Q. How old were you when you came to the United States?

A. I was between ten and eleven years old.

Q. Did your father come here with you?

A. No, sir.

Q. When did your father come?

A. My father came here in the sixties.

Q. How many years after you came?

A. I came here in '78.

(Testimony of Joseph Jurey.)

Q. Your father was here then, before you arrived in the United States? A. Yes, sir.

Q. You came to the United States in 1878?

A. Yes, sir.

Q. Have you remained here constantly since that time? A. Never been out of the State since.

Q. Do you know whether or not your father was a naturalized citizen before you became twenty-one years of age? A. Yes, sir.

Mr. THATCHER.—Objected to on the ground it is incompetent, irrelevant and immaterial, and hearsay; the record and the papers are the best evidence.

Mr. SPRINGMEYER.—I submit, your Honor, that he may testify to matters within his own knowledge.

The COURT.—Those things are generally a matter of record.

Mr. SPRINGMEYER.—(Q.) Do you know where your father's naturalization papers are?

A. Yes, sir. [362]

Q. Where are they? A, In Battle Mountain.

Q. Belonging to your father?

A. My mother has them in her care.

Q. Did you ever see them? A. Yes, sir.

Q. Was your father naturalized before you became twenty-one? A. Yes, sir.

Mr. THATCHER.—I move to strike it out; it assumes something not yet in evidence.

The COURT.—The record is the best evidence, It will have to go out.

Mr. SPRINGMEYER.—(Q.) When did your

(Testimony of Joseph Jurey.)

brother, William T. Jurey, come to this country?

A. In '78, the same year I did.

Q. How old was he when he came here?

A. He was about thirteen years old.

Q. He was two or three years older than you.

A. Two years and four months older than I am; yes, sir.

Q. Are you a citizen of the United States?

Mr. THATCHER.—Objected to on the ground that it is incompetent, irrelevant and immaterial; the record is the best evidence of the facts constituting citizenship. He has shown he was born in England.

The COURT.—I will have to sustain the objection. The record is always the best evidence.

Mr. SPRINGMEYER.—(Q.) Where were you employed after you arrived in the United States?

A. I moved right into Copper Canyon; I wasn't employed no place.

Q. Did you go to Copper Canyon immediately after you arrived? A. Yes.

Q. Immediately after you came to the United States?

A. My father was in Copper Canyon, and we came to him.

Q. Have you lived there ever since?

A. No, sir. [363]

Q. Where else have you lived?

A. Galena and Battle Mountain.

Q. Have you lived anywhere else?

(Testimony of Joseph Jurey.)

A. I have, yes; I have lived in Kennedy, Austin and Lewis.

Q. How long did you live in Kennedy?

A. Two years.

Q. What has been your occupation? A. Miner.

Q. Since you have been employed? A. Miner.

Q. Where have you mined, in what mines, I mean?

A. I have mined in Copper Canyon, Austin, Lewis, Kennedy, all around the State.

Q. In what capacities have you been employed?

A. As a miner, caretaker, foreman.

Q. Have you done any prospecting?

A. A little, not much.

Q. Have you ever located any mining claims?

A. Yes, sir.

Q. You are at the present time in the employ of Mr. Ralph, the defendant in this case, are you not?

A. Yes, sir.

Q. Do you know Copper Canyon Mining District?

A. Yes, sir.

Q. In the Battle Mountain Mining District, Lander County, Nevada? A. Yes, sir.

Q. Do you know the Evening Star and Midas claims? A. Yes, sir.

Q. When did you first know them? A. In 1907.

Q. How did you come to know them at that time?

A. Well, the claims was open for location.

Q. Did you locate the claims at that time?

A. Yes, sir.

Q. Do you know whether before you made the location the ground was open or not?

(Testimony of Joseph Jurey.)

A. Did I know? Yes, sir.

Q. Was the ground covered by both these claims open at the time you made the location of them?

A. There was no one on it when we made the location, no, sir.

Q. Did you examine the ground to see whether there were any monuments? A. Yes, sir.

Q. What did you do on that day? A. In 1907?

[364]

Q. Yes, when you made the location of the Evening Star and the Midas.

A. We put up our notices.

Q. Before you put up your notices what did you do?

A. Went over the ground to see that no one was there.

Q. Did you do anything else before you put up your notice, in the way of finding anything?

A. I found a discovery, yes.

Q. How did you go about finding a discovery?

A. Walked around and found discoveries.

Q. Did it take you any time to find the discoveries? A. Not a great while, no.

Q. Who was with you? A. My brother.

Q. William T. Jurey? A. Yes, sir.

Q. What did you find on the Evening Star claim?

A. I found a small cut.

Q. What did you find in the cut?

A. Found porphyry and quartz.

Q. Did you find any mineral?

(Testimony of Joseph Jurey.)

A. Well, I could not say as to mineral; it looked mineralized, anyway.

Q. Did you find anything that looked like a vein?

A. Yes, sir.

Q. How wide was it?

A. Well, the vein may be twenty feet wide for all I know—it is a big vein.

Q. The vein on the Evening Star that you discovered you say is a big vein? A. Yes, sir,

Q. What mineral did it contain, in your opinion, at the time you discovered it?

Mr. THATCHER.—Objected to on the ground a sufficient foundation has not been laid.

The COURT.—I think he had better testify to the facts first; what he saw there; what the appearance of it was.

Mr. SPRINGMEYER.—(Q.) What was the appearance of it, Mr. Jurey? [365]

A. Well, it was gold-bearing, and copper.

Q. Did it appear to contain anything else beside gold and copper? A. A little silver.

Q. Anything else? A. Nothing else.

Q. Was it colored or not? A. Sir?

Q. Was it colored or not? A. Colored?

Q. Yes; were there any stains or colors in it?

A. Kind of chloride stain.

Q. State whether or not, in your opinion, it carried values?

A. I think so, yes; it looked as though it ought to carry values; I never had it assayed.

Q. You never had it assayed? A. No, sir.

(Testimony of Joseph Jurey.)

Q. If you were to see that ground in 1907, without being in the employ of anyone, seeking to locate a mining claim, state whether or not you would locate that as mineral ground? A. I would, yes, sir.

Q. You think that was valuable ground to locate as mining ground, do you? A. Yes, sir.

Q. After you made this discovery, state what you did?

A. We measured off then, and put up our corners.

Q. Did you build any monument at the point of discovery? A. Yes, sir.

Q. What kind of a monument did you build?

A. Rock and dirt and a four by four post.

Q. How high? A. Four feet.

Q. When you say you staked off, do you mean you stepped off the ground?

A. No, we measured it off with a tape-line.

Q. You measured it off with a tape-line?

A. Yes, sir.

Q. Did you build any other monuments?

A. Side centers, yes, sir.

Q. Did you build any monuments on the ends?

A. No. [366]

Q. Were there monuments on the ends?

A. The corners, that is all.

Q. The corner monuments were there?

A. Yes, sir.

Q. What sort of monuments were they?

A. They were dirt and rock and a four by four.

Q. That was on the Evening Star Claim?

A. Yes, sir.

(Testimony of Joseph Jurey.)

Q. Did you build a monument on the southwest corner of the Evening Star? A. Yes, sir.

Q. What sort of a monument was that?

A. That was the same—rock.

Q. Did you mark the corner monuments?

A. Yes, sir.

Q. And the side monuments of the claim?

A. Yes.

Q. Then what did you do after buildng these monuments?

A. Then we run a cut about twenty feet, and about six feet wide, and about eight or ten feet deep—ten feet deep.

Q. Did you do anything with regard to a notice?

A. With the notice?

Q. Yes; did you post a notice anywhere on the claim?

A. In the center of the claim, yes, sir.

Q. What was that notice; was that a notice of discovery? A. Yes, sir.

Q. Where did you post that?

A. At the discovery.

Q. Did you put it in anything?

A. In a can, yes.

On what part of the discovery did you put it?

A. In what part of the discovery? In the discovery monument.

Q. Right in among the rocks of the monument?

A. Yes, sir.

Q. In the notice of location did you describe the claim? A. Yes, sir.

(Testimony of Joseph Jurey.)

Q. Giving the name of it? A. Yes, sir.

Q. And the distances of the boundary monuments from the discovery monument? A. Yes, sir.

Q. Did you describe the work that was done?

A. Yes, sir. [367]

Mr. THATCHER.—Describe the work on the notice; I don't think you want to go quite that strong.

Mr. SPRINGMEYER.—I don't know whether he did or not; he said he did the work first; he might have done the work first, and put it in, they sometimes do.

Q. How soon after making this discovery did you build the monument?

A. Inside of twenty days.

Q. You built all the monuments inside of twenty days? A. Yes, sir.

Q. How soon did you do the work that you testified to? A. Right after we put in the location notice.

Q. Right after you put in the location notice?

A. Yes, sir.

Q. Did you file any certificate of location on the claim? A. Yes, sir.

Q. Please state what this is? (Hands to witness.)

A. That is the notice.

Q. In whose handwriting is that?

A. That is mine.

Q. Is all the handwriting on this yours?

A. No, that is my brother's.

Q. Your brother's handwriting is his signature on this, is it? A. Yes.

Q. All the rest of it is yours?

(Testimony of Joseph Jurey.)

A. All the rest of it is mine.

Mr. SPRINGMEYER.—I offer that in evidence.

Mr. THATCHER.—No objection.

(Certificate of Location Admitted in evidence, marked Defendant's Exhibit No. 10, and reads as follows:)

**Defendant's Exhibit No. 10—Certificate of Location of Evening Star Claim.**

"CERTIFICATE OF LOCATION.

THIS IS TO CERTIFY that a mining claim named the Evening Star was located by Wm. T. Jurey, Joseph Jurey, on the 27th day of Mar. 1907, situated in Battle Mountain Mining District, Lander [368] County, State of Nevada, and situated Copper Canyon. This claim parallels the Midas on the west and situated about 1 mile southerly direction from the old Copper Canyon Mine.

We claim, 1500 lidnear feet along the course of the mineral-bearing ledge, lode, or vein, extending 750 feet from the location monument in a northerly direction, and 750 feet in a southerly direction, together with 300 feet on each side of the center of the ledge for the entire length of the claim.

The discovery work consists of a running cut situated about 3 feet in a westerly direction from the location monument, and its dimensions are: 6 wide 10 feet long and 10 feet deep, exposing ledge, lode or vein in place.

'The northwest corner is marked by a monument 4 feet high, inscribed 'N. W. corner Evening Star

(Testimony of Joseph Jurey.)

mine'; the southwest corner is marked by a monument 4 feet high, inscribed 'S. W. corner Evening Star mine'; the southeast corner is marked by a monument 4 feet high, inscribed 'S. E. corner Evening Star mine'; the northeast corner is marked by a monument 4 feet high, inscribed 'N. E. corner Evening Star mine.' There is also a —— at the center of each side line. The discovery work has been done and the location completed since Mar. 27th, 1907.

Dated June 21st, 1907.

WM. T. JUREY.
JOSEPH JUREY.

[Endorsed]: Filed for Record at the Request of Joseph Jury June 22, A. D. 1907, at 4:00 P. M., and recorded at Page 423 of Book 4 of Duplicate Mining Notices, Records of Lander County, Nevada. H. W. Dyer, County Recorder. By S. W. Hunt, Deputy. File No. 2448."

Mr. SPRINGMEYER.—(Q.) On the same day did you make any other Location in Copper Canyon?

A. Yes, sir.

Q. Did you locate the Midas claim? A. Yes, sir.

Q. How did you come to locate that?

A. Well, we discovered a little hole, and put the notice on it. [369]

Q. Did you find anything in the hole?

A. Found some copper and copper stains.

Q. Anything else?

A. Not very much of anything else, no, but stains at that time.

Q. Did you find any mineral besides the copper?

(Testimony of Joseph Jurey.)

A. After we done the location work we found some quartz.

Q. After you did the location work?

A. Yes, sir.

Q. Was that right at the location work?

A. Yes, sir.

Q. What sort of quartz was that?

A. It was a hard, white quartz.

Q. What did it look like, outside of being white and hard?

A. Well, it carried a little iron and copper stan.

Q. Did it look as though it might carry any mineral?

A. It looked as though it might carry a little gold.

Q. What was its appearance as to being vein matter, or otherwise?

A. It showed a vein there about two feet wide.

Q. About two feet wide? A. Yes.

Q. Did that vein have any walls? A. It did, yes.

Q. Were those walls different from the surrounding rock? A. Yes, sir.

Q. Was the material in the vein different from the surrounding rock? A. Yes, sir.

Q. In what respect? A. What did you say?

Q. In what way was it different?

A. Well, it showed quartz, porphyry, and stuff like that, between the walls.

Q. Besides the mineral you have testified to?

A. Yes, sir.

Q. In what direction did the vein dip, if you know?

(Testimony of Joseph Jurey.)

A. It run northerly and southerly, and dipped to the west.

Q. About how far did you open up the vein, if you know? A. Well, I think it is about ten feet.

Q. Was the vein opened up for that distance?

A. It was opened up for about ten feet, and the depth of it was [370] about ten feet, and about six feet wide.

Q. How long was that out?

A. It is about ten feet.

Mr. THATCHER.—I didn't hear what the dimensions of that cut were.

A. I said about eight feet deep, ten feet long and six feet wide.

The COURT.—Eight feet deep, you said?

A. Yes, sir.

Mr. SPRINGMEYER.—(Q.) Was that the vein that was opened up that distance, or was that the size of the cut?

A. That is the size of the cut.

Q. Six by eight by ten; is that what you said?

A. I says eight feet deep, about ten feet long, and six feet wide.

Q. Now, in how much of that cut was the vein exposed?

A. Well, it shows right up to the surface.

Q. State whether or not in your opinion that was locatable as a lode mining claim for mineral?

Mr. THATCHER.—I object, however, I guess we will save time by letting it go.

Mr. SPRINGMEYER.—(Q.) Would you have

(Testimony of Joseph Jurey.)

located that for yourself in 1907, as a miner?

A. I would, yes.

Q. Now, after you made this discovery did you build any monument? A. Yes, sir.

Q. Where did you build it?

A. Built the corners and side centers.

Q. Did you build anywhere around the discovery point? A. Yes, sir.

Q. Whereabouts?

A. Right in the center of the discovery.

Q. How big a monument?

A. Well, it is about four feet high, and four feet across.

Q. What was it made of?

A. Stone and dirt, four by four post.

Q. What did you do then?

A. Then we went and done our work. [371]

Q. Did you do any measuring?

A. With a tape-line, yes, sir.

Q. Did you measure the distances by tape-line?

A. Yes, sir.

Q. What then did you do?

A. Well, we done our work, done our location work.

Q. Did you build any monuments on corners, and on the middle of the side lines?

A. On the sides, just the side centers.

Q. Did you use other monuments on the ends?

A. Yes, sir.

Q. How large were those monuments?

A. They were a mound of dirt and rock, four by four, four feet high and four feet across.

(Testimony of Joseph Jurey.)

Q. Did you mark them? A. Yes, sir.

Q. As showing the boundaries of the Midas claim?

A. Yes, sir.

Q. Did you place a notice of location anywhere on the claim?

A. Placed a location in the discovery monument in the center of the claim.

Q. What was in the location notice—just generally, did it contain a notice that you had located the claim?

Mr. THATCHER.—Haven't you the notice?

Mr. SPRINGMEYER.—We haven't the notice; we have just the certificate of location; we haven't the notice of either of these claims.

Q. Did you place a notice of location, describing the claim and the work? A. Yes, sir.

Q. Naming the claim and giving the date of location? A. Yes, sir.

Q. And names of the locators? A. Yes, sir.

Q. Where did you place it?

A. In the discovery monument.

Q. How soon did you build these monuments after you made the discovery?

A. Just as soon as we could measure off the ground.

Q. How many days was that?

A. Oh, two or three days.

Q. Two or three days after you made the discovery? A. Yes. [732]

Q. Within how many days after you made the discovery did you do the work?

(Testimony of Joseph Jurey.)

A. Just as soon as we had it staked.

Q. How many days was that after the discovery?

A. Oh, I could not say; it might have been five or six days, or ten days.

Q. Will you please state what that is? (Hands to witness.)

A. This is the discovery notice of the Midas.

Q. Certificate of Location?

A. Certificate of Location.

Q. Of the Midas claim? A. Of the Midas claim.

Q. In whose handwriting is that?

A. That is mine.

Q. Is it all your writing, including the signatures?

A. No, my brother signed his name, there.

Q. Your brother signed his name, otherwise—

A. The rest is mine.

Mr. SPRINGMEYER.—We offer that in evidence.

Mr. THATCHER.—No objection.

(The Certificate of Location is admitted in evidence, marked Defendant's Exhibit No. 11, and reads as follows:)

**Defendant's Exhibit No. 11—Certificate of Location of Midas Claim.**

"CERTIFICATE OF LOCATION.

THIS IS TO CERTIFY That a mining claim named the Midas was located by Wm. T. Jurey and Joseph Jurey on the 27th day of March, 1907, situated in Battle Mountain Mining District, Lander County, State of Nevada, and situated in Copper Ca[illegible]on.

(Testimony of Joseph Jurey.)

This claim parallels the Yellow Jacket on the West and situated in southerly direction from the old Copper Canyon Mine.

We claim, 1500 linear feet along the course of the mineral bearing ledge, lode or vein, extending seven hundred 50 feet from the location monument in a northerly direction, and 750 feet in a southerly direction, together with 300 feet on each side of the center of the ledge for the entire length of the claim.

The discovery consists of running cut situated about 600 [373] feet in a northerly direction from the location monument, and its dimensions are: six feet wide, 10 feet long and 10 feet deep, exposing ledge, lode or vein in place.

The northwest corner is marked by a monument 4 feet high, inscribed 'N. W. corner Midas Mine'; the southwest corner is marked by a monument 4 feet high, inscribed 'S. W. corner Midas Mine'; the southeast corner is marked by a monument 4 feet high, inscribed 'S. E. corner Midas mine'; the northeast corner is marked by a monument 4 feet high, inscribed 'N. E. corner Midas Mine.' There is also a —— at the center of each side line. The discovery work has been done and the location completed since Mar. 27th, 1907.

Dated 21st of June, 1907.

WM. T. JUREY.
JOSEPH JUREY.

[Endorsed]: Filed for Record at the Request of Joseph Jury. June 22, A. D. 1907, at 4:00 P. M. and recorded at Page 424 of Book 4 of Duplicate Mining

(Testimony of Joseph Jurey.)

Notices, Records of Lander County, Nevada. H. W. Dyer, County Recorder. By S. W. Hunt, Deputy. File No. 2449."

(RECESS FOR FIVE MINUTES. AFTER RECESS.)

Mr. SPRINGMEYER.—(Q.) Mr. Jurey, in the certificate of location you have designated the discovery work as consisting of a running cut?

Mr. THATCHER.—To which claim?

Mr. SPRINGMEYER.—In both of them.

(Q.) What do you mean by a running cut; is that an open cut, or is it something else?

A. Well, that shaft would be a cut, wouldn't it?

Q. You mean either a shaft or an open cut, by the designation "running cut"?

A. That is what I mean, yes.

Q. How long have you lived in Copper Canyon?

A. Sixteen years.

Q. When did you go there? A. In May, '98.

Q. Have you lived there ever since Mr. Jurey? [374]

A. I lived in the basin one year.

Q. You lived at Copper Basin one year?

A. Yes.

Q. What year was that? A. In 1914.

Q. During 1914 did you ever go to Copper Canyon? A. Yes, sir.

Q. Do you know whether there were men living on the Salt Lake No. 3 during the year 1914?

A. Yes, sir.

(Testimony of Joseph Jurey.)

Q. In what capacity were you employed in Copper Canyon from the year 1898?

A. As miner, caretaker and foreman.

Q. For whom were you working?

A. The Glasgow Western Exploration Company.

Q. At the time you were working for the Glasgow Western Exploration Company were they the owners of the Salt Lake No. 3, the Evening Star and the Midas? A. Yes. sir.

Q. Were they the owners of any other claims?

A. Yes, sir.

Q. Where did you live, in what building?

A. In a little cabin.

Q. Pardon me? A. In a cabin.

Q. Whereabouts? A. Along the west side line.

Q. On what claim was the cabin?

A. Salt Lake No. 3.

Q. Pardon me? A. Salt Lake No. 3.

Q. Were there any other men living on that claim during the time you lived there? A. My brother.

Q. Were there at any time any other men besides your brother? A. Yes, sir.

Q. How many on the average?

A. Oh, maybe ten or twenty at times.

Q. About how long were you foreman?

A. Ten years.

Q. During what years?

A. Well, from—I could not just tell you; they used to work a while and then shut down a while; the pay-rolls will show all that—the last ten years.

(Testimony of Joseph Jurey.)

Q. What year were you first made a foreman?

[375]

A. In 1906 or 1907, I forget.

Q. You have been foreman ever since?

A. Yes.

Q. Are you familiar with the work that has been done on the Salt Lake No. 3 claim since the year 1897? A. Yes, sir.

Q. Are you familiar with the roads on the Salt Lake No. 3 claim? A. Yes, sir.

Q. Have there been any changes made in the roads on that claim since you went there? A. Yes, sir.

Q. What changes?

A. Which road do you mean?

Q. Well, any of the roads—were there any changes made in the roads?

A. There was a road made into the mill, and changes in the road going up to the canyon.

Q. What changes were made in the road going up to the canyon?

A. Why, we moved the road from the west side to the east side.

Q. What was the reason for that?

A. The cloudburst washed the old road away in places.

Q. And where was the other road built?

A. The old road?

Q. No, the new road that was built.

A. That was on the Salt Lake No. 3.

Q. Is that the road that goes to the mill?

A. That is the road that goes to Galena.

(Testimony of Joseph Jurey.)

Q. Well, was there a road built to the mill?

A. Yes, sir.

Q. In what year was that built? A. In 1912.

Q. Do you know about how much was expended in the building of that road? A. No I don't.

Q. Did you find anything when that road was built?

A. We found a few little veins.

Q. Where were the veins?

Mr. THATCHER.—Well, does he know? He has not testified to working on that road.

Mr. SPRINGMEYER.—(Q.) Did you work on the road that was built [376] to the mill?

A. Yes, sir.

Q. What did you do with regard to working on it?

A. I was looking after the men who was working on it.

Q. What did you find on that road in the way of veins? A. Found some small veins.

Q. What did they carry?

A. I never tried them in no way—assayed them, or anything.

Q. What was their appearance?

A. Looked like chloride and copper stains.

Q. Did they look as though they might carry any other mineral? A. Yes.

Q. What? A. Gold.

Q. How many veins of that sort were there, Mr. Jurey? A. Well, one in particular.

Q. How large was that?

A. Oh, I should say it was about a foot on the sur-

(Testimony of Joseph Jurey.)

face, close to the surface.

Q. Did it have walls? A. It has one wall, yes.

Q. What sort of material was in the vein?

A. It was a porphyry.

Q. Was it different from the country rock?

A. Yes, sir.

Q. Did you notice whether the vein had any dip?

A. Yes.

Q. In what direction was it dipping?

A. Dipping to the east.

Q. You said you found this in 1912, when you were superintending the men who built the road?

A. I was foreman, yes.

Q. You were foreman, rather? A. Yes, sir.

Q. You noticed it at that time, did you?

A. Yes, sir.

Q. Do you know whether there was any work done on the Salt Lake No. 3 claim in the year 1913?

A. Yes, sir.

Q. What work was done?

A. There was a little shaft sunk on the south end —southwest end.

Q. How deep was that shaft, about, if you know? [377]

A. Well, it was from twelve to fifteen feet, I am not quite sure.

Q. Did you or did you not use a windlass in sinking the shaft? A. Yes, sir.

The COURT.—(Q.) On what claim was it you sunk this shaft?

A. Salt Lake No. 3.

(Testimony of Joseph Jurey.)

Mr. SPRINGMEYER.—(Q.) What were the dimensions of the shaft?

A. Four by six.

Q. Did you use any timber? A. Yes, sir.

Q. How much? A. Two set.

Q. Two sets of timber? A. Yes, sir.

Q. About how many men were working on that shaft, if you know? A. Two men.

Q. Do you know how long they worked?

A. No, I don't just know how long.

Q. State whether or not the expense of sinking that shaft was more than one hundred dollars, in your opinion? A. More than one hundred dollars?

Q. Yes.

A. I don't think it would be that much.

Q. Well, including the cost of the timbers, do you think it would be that much?

A. It might at the price of timber up in that country.

Q. Was there any other work done on Salt Lake No. 3 that year? A. This was 1913?

Q. Yes. A. They was working on the mill.

Q. On the part of the mill that is situated on Salt Lake No. 3? A. Yes.

Q. What work was done on the mill?

A. They were grading out for benches and tanks.

Q. Was this work done before or after the month of September, 1913? A. Before.

Q. Under whose direction was the work done?

A. Under the Glasgow and Western Exploration Company. [378]

(Testimony of Joseph Jurey.)

Q. The Glasgow and Western Exploration Company at that time was the owner of the claim?

A. Yes, sir.

Q. Now, during the year 1913, I understood you to say men were living in the houses on the Salt Lake No. 3 claim? A. Yes, sir.

Q. You said the shaft that was sunk there was about fifteen feet deep, is that correct?

A. Yes, around about fifteen feet, somewhere around there.

Q. Was there any work done on the Midas claim in the year 1912? A. Yes, sir.

Q. What work was done?

A. There was a tunnel built on it.

Q. How much work was done on the tunnel?

A. One hundred dollars worth.

Q. About how many feet, if you know?

A. Well, I could not say—twenty or twenty-five feet.

Q. About twenty-five feet? A. Yes.

Q. How high and how wide was the work?

A. Oh, it was six or seven feet high, five feet wide.

Q. That was done during the year 1912?

A. Yes, sir.

Q. Was there any work done on the Midas in the year 1913—do you know whether there was a shaft on the northwest corner? A. Yes, sir.

Q. About how deep was that, if you know?

A. That shaft was about sixteen feet.

Q. Were there timbers used in that shaft?

A. Yes, sir.

(Testimony of Joseph Jurey.)

Q. How many sets?

A. Two, collar set and the windlass set.

Q. You used a windlass in sinking the shaft, did you? A. Yes, sir.

Q. What was the width and length of the shaft?

A. Four by six.

Q. Was that worth more than a hundred dollars, in your judgment, including the cost of the timber? [379]

A. Yes, it was worth a hundred dollars.

Q. Was that work done before or after September, 1913? A. Before

Q. Was there any other work done on the Midas in the year 1913, that you know of? A. Yes.

Q. What was it?

A. Done in the tunnel, the same tunnel we did in 1912.

Q. How much work was done on the tunnel?

A. There was a hundred dollars worth of work done.

Q. How many feet, about, were run in that tunnel, if you know?

A. About the same—twenty-five feet.

Q. About the same as the preceding year?

A. Yes.

Q. Was any work done on the Evening Star claim in the year 1912? A. Yes, sir.

Q. What work was done?

A. There was a cut run in about the center of the claim, east—a long cut.

Q. How many feet long? A. About twenty feet.

(Testimony of Joseph Jurey.)

Q. How wide? A. About six feet.

Q. And about how deep?

A. About eight-foot face.

Q. What was that work worth?

A. That was worth a hundred dollars.

Mr. THATCHER.—That was when?

Mr. SPRINGMEYER.—1912. (Q.) Was any work done on the Evening Star in the year 1913, if you know?

A. On the Evening Star?

Q. Yes. A. Yes.

Q. What work was that?

A. That was sinking a shaft on the west side line.

Q. How deep was that shaft?

A. Thirty-three feet vertically.

Q. How much on the incline?

A. About twenty feet.

Q. That made fifty-three feet altogether?

A. Yes, sir. [380]

Q. And what were the dimensions of the shaft as to length and breadth?

A. It was a good size shaft, I guess it was five by six.

Q. Were there any timbers used in that?

A. Yes, sir.

Q. Was that work worth more than a hundred dollars, or not? A. Yes, sir.

Q. What time in 1913 was that done?

A. That was done in the summer.

Q. Was it done before the month of September?

A. Yes, sir.

(Testimony of Joseph Jurey.)

Q. I understand you to say then that in the year 1913 the shafts sunk on these three claims amounted to about eighty-five feet, is that correct?

A. That is about correct, yes,

Q. Under whose direction was the work in 1912 and 1913 on these three claims, performed?

A. 1912 was under the direction of the Glasgow Western, and 1913—both years.

Q. Was it performed for the company?

A. Yes, sir.

Q. And also in 1913? A. Yes, sir.

Q. At the time the shafts were sunk on the three claims in 1913, were any other locations made over the three claims?

A. No, sir, not at that time.

Q. Not at that time? A. No, sir.

Q. Did you find anything in the shaft on the Evening Star? A. Yes, sir.

Q. What did you find?

A. Gravel—Gold-dust in the gravel.

Q. Placer gravel? A. Placer gravel, yes sir.

Q. Did you find anything in the shaft on the Midas?

A. Very little; it panned a little, not much.

Q. Did you find anything in the shaft on the Salt Lake No. 3? A. About the same.

Q. But there was a little in both of them, was there? A. Just a color, yes. [381]

Q. You say that you have lived in Copper Canyon, in these houses on Salt Lake No. 3 continuously since 1897, except during the year 1914?

(Testimony of Joseph Jurey.)

A. No, I started there in 1898.

Q. Did you see the boundary monuments on each of these claims during the time you lived in the canyon? A. Yes, sir.

Q. Do you know where the boundary monuments on the Salt Lake No. 3 were in the year 1898?

A. Yes, sir.

Q. Do you know whether there has been any change in the location of those monuments?

A. No, sir.

Q. When did you last see the monuments?

A. About a month ago.

Q. Were they then in the same position as in the year 1897? A. Yes, sir—1898.

Mr. THATCHER.—What monuments are those, those on the Evening Star and the Midas?

Mr. SPRINGMEYER.—No, that was the Salt Lake No. 3.

WITNESS.—Yes, sir.

Q. Did you see the monuments on the boundaries of the Evening Star during the time you lived on the claims? A. Yes, sir.

Q. When did you last see those monuments?

A. Well, about a month or six weeks ago; I have to go round them every once in a while to see that they are up and in place.

Q. What was their position at that time?

A. They were all up in the same place.

Q. The same place at which you put them in the first place? A. Yes, sir.

Q. Did you see the monuments on the Midas claim

(Testimony of Joseph Jurey.)

during the time you lived in the canyon?

A. Yes sir.

Q. When did you last see them?

A. Oh, about the same time.

Q. What was their position?

A. Same position.

Q. Did you see the monuments on each of those three claims during the summer of 1913?

A. Yes, sir. [382]

Q. What was their position at that time?

A. Same as they are now.

Q. When you were working on these claims in Copper Canyon, where were you paid for your work?

A. On the Salt Lake No. 3.

Mr. THATCHER.—What?

Mr. SPRINGMEYER.—I asked him where he was paid for his work?

Q. On Salt Lake No. 3? A. Yes, sir.

Q. How were you paid?

A. Paid by check, monthly.

The COURT.—What year did that cover?

Mr. SPRINGMEYER.—During the time he was in the canyon, all the time he lived there.

Q. How did you receive the check?

A. By mail.

Q. By mail? A. Yes, sir.

Q. To whom were the checks sent?

A. To myself.

Q. How did you receipt for the payments made to you?

Mr. THATCHER.—Objected to as immaterial, if

(Testimony of Joseph Jurey.)

the Court please. We are wasting a lot of time.

Mr. SPRINGMEYER.—I want to say frankly, your Honor, that the purpose of this examination is to get in the pay-rolls of the company. I want to show that the witness was present when the money was paid to the men in the employ of the company during all these years, and saw them sign vouchers, or receipts, for the payment.

The COURT.—For work done on this claim?

Mr. SPRINGMEYER.—On these three claims, and on other claims.

Mr. THATCHER.—It is immaterial.

Mr. SPRINGMEYER.—The purpose is to show particularly with reference to a right that the defendant and his predecessors in interest may have acquired by adverse possession of the claims.

Mr. THATCHER.—I submit, if the Court please, it is immaterial. [383]

The COURT.—I think it is utterly immaterial as to other claims. If you can show work done on those claims, that is another matter; but the mere fact that you are standing on the Salt Lake No. 3, and pay out money there to men who are working on the hill above, I do not see that it helps the title to this Salt Lake No. 3 in any way.

Mr. SPRINGMEYER.—I can perhaps show that a little bit further.

The COURT.—If it was work done for assessment work or annual labor on that claim, it seems to me that is material.

Mr. SPRINGMEYER.—Before I go on with that

(Testimony of Joseph Jurey.)

I will introduce some other evidence. I will withdraw that question for the time being. Pardon me for just a moment until I find what I want.

Mr. THATCHER.—Do you want to introduce proofs of labor?

Mr. SPRINGMEYER.—Yes.

Mr. THATCHER.—Do you want all of them?

Mr. SPRINGMEYER.—There was but one proof made for a number of claims, consequently we only want to offer it as to the three claims involved; the rest of the claims may be considered as not being in the record, but the proof was made as one proof; for instance, for fourteen claims, they would make the affidavit in one form.

Mr. THATCHER.—I suggest they might be offered; I would like to look them over, if the Court please; I don't think any of them comply with the requirements of our statute which make this certificate when properly recorded and signed, *prima facie* evidence of the performance of annual labor. Do you want to offer all of these?

Mr. SPRINGMEYER.—They are proofs of labor on all three of these claims, covering every year since their location; and if those are admitted in evidence, I conceive I can show what moneys [384] were paid by the company generally in Copper Canyon, and then it may be brought out that it is impossible to segregate the exact amounts of money which were paid to the men each time for the work done on these claims. I offer those in evidence.

(Testimony of Joseph Jurey.)

Mr. THATCHER.—I object.

The COURT.—I will not rule on them now; you can take them and look them over.

Mr. SPRINGMEYER.—(Q.) Mr. Jurey, during the years that you were in the employ of the company, state whether the men were paid for work they performed on each of these claims, or whether they received wages for their general work.

Mr. THATCHER.—Objected to as immaterial.

Mr. SPRINGMEYER.—I want to show, and I submit that it is material for the purpose of showing, that these payments were not segregated; when a hundred dollars' worth of work was performed on Salt Lake No. 3, the men were not paid for that exactly, but it simply went on account of their wages.

Mr. THATCHER.—If the Court please, it makes no difference what has been paid by the Glasgow Western; what the law requires is the performance of one hundred dollars' worth of work upon a claim, or for the benefit of the claim; and it is the duty of counsel for the defendant if they want to show the performance of annual labor, to show that the work was done, and was worth a hundred dollars. It makes no difference if the Glasgow Western paid two hundred dollars, if it was only worth a hundred dollars. The thing is to show what work was done on the claim, or for the benefit of the claim, and the value of it.

Mr. SPRINGMEYER.—I concede counsel is right on the proposition there must be one hundred dollars' worth of work done to constitute annual labor;

(Testimony of Joseph Jurey.)

but it is a fact that the amount of money paid out is evidential of the value of the work. But outside [385] of that question, with reference to the adverse possession, and assuming rights of ownership, clearly the amount of money paid out by the owner of these claims in holding the property, for supplies, even, and particularly with reference to the men, would be most material, and it is to that point that we particularly direct this evidence.

The COURT.—I am very doubtful about that, Mr. Springmeyer—very doubtful about it. I don't think the amount of money you pay makes any particular difference. For instance, you are attempting to acquire title by adverse possession; now it is not the amount of your adverse possession, it is the character of your possession which makes it adverse; it is immaterial the amount you pay; it is what you do there to assert your title. And when it comes to introducing evidence, showing that you have paid out large sums of money for this and other claims, it seems to me we are going to get into a good deal of confusion.

(Discussion.)

The COURT.—I think you had better prove the work first, if you can; and if you find it is absolutely impossible to prove any work on that claim, then you can prove work that was done for the benefit of the claim somewhere else, and follow it up by proof of the value of the work to this particular claim.

Mr. SPRINGMEYER.—We will except to the ruling of the Court, just to save the record.

(Testimony of Joseph Jurey.)

Q. Mr. Jurey, do you know whether the owners of these three claims owned any other property?

A. Yes, sir.

Q. What other property did they own?

A. They owned—shall I tell you the names of the claims?

Q. Well, just state whether the property was adjoining or not.

A. They were adjoining, yes. [386]

Q. The claims were adjoining these three in question in these cases? A. Yes, sir.

Q. During all the years you were employed there, was that the fact? A. That is the fact.

Q. How were the men paid, by daily wages, or were they paid for their work on each of the claims?

A. By day's wages.

Q. During these years what was the particular mining work performed by the owner of all the claims.

A. Well, it is working around the old mine, the old copper mine, the outside mines.

The COURT.—(Q.) What did you call it?

A. The old copper mine.

Mr. SPRINGMEYER.—(Q.) That is popularly known as the Copper Basin Mine?

A. Well you are talking about Copper Canyon, ain't you?

Q. Yes, the Copper Canyon mine, rather.

A. The Copper Canyon mine.

Q. Did the company own a mill? A. Yes, sir.

Q. What year was the mill built?

(Testimony of Joseph Jurey.)

A. Built in 1912 and 1913.

Q. Where was the mill built?

A. Salt Lake No. 3.

Q. Was it entirely on Salt Lake No. 3?

A. No, not all of it, part of it.

Q. How much of it was on Salt Lake No. 3?

A. Well, about half of it, I should think.

Q. Were any of the tanks on Salt Lake No. 3?

A. Yes, sir.

Q. Do you know what the cost of building that mill was? A. No, I don't.

Q. Do you know about what the mill was worth?

A. No, sir.

Q. Could you as a mining man estimate about what it was worth at the time it was built?

Mr. THATCHER.—Objected to; he has not shown any qualification. [387]

Mr. SPRINGMEYER.—I withdraw the question.

(Q.) Was there any excavating done for the mill on Salt Lake No. 3.

A. Yes, sir.

Q. In what year was that excavating done?

A. 1912 and 1913.

Q. Do you know about what it cost to do that excavating? A. No, I don't.

Q. About how much work was the excavating?

A. Roads and mill.

Q. No, I mean right around the mill and leaching plant. A. I don't know how much.

Q. You don't know about how many cubic yards of earth were removed? A. No.

(Testimony of Joseph Jurey.)

Q. I believe you testified that there was a road built on the northeast corner of Salt Lake No. 3, in 1912? A. Yes.

Q. Do you know about what the expense of building that road was? A. No, sir, I don't.

Q. Do you know about how many cubic yards of material were removed in the building of that road?

A. No, sir.

Q. Were you in charge of that work?

A. No, sir.

Q. Did you see it done?

A. I seen it done, yes.

Q. Do you know how long it took to build that road on Salt Lake No. 3?

A. Well, it took several months.

Q. State whether or not it was blasting work.

A. It was all blasting, yes, sir.

Q. You stated, I believe, that in the course of the building of that road, there were veins found.

A. Yes, sir.

Q. Do you know what the approximate cost of building a road like that, under similar conditions, would be?

Mr. THATCHER.—If the Court please, I am willing to admit there is an open cut here, a mill partially within the boundaries of both claims, and a road running up to it; that the excavations [388] for the road are of the value of at least four or five hundred dollars, and for the mill, a thousand.

Mr. FORMAN.—The road was constructed to go to the mill, and the excavations made under the mill

(Testimony of Joseph Jurey.)

were for the purpose of placing the mill.

Mr. THATCHER.—If you are trying to prove the value, I am willing to admit that.

Mr. SPRINGMEYER.—I do not understand what your admission is.

Mr. THATCHER.—I am willing to admit the value of this road was five hundred dollars, and I am willing to admit that the excavations for the mill, within the boundaries of Salt Lake No. 3, were worth a thousand dollars.

Mr. SPRINGMEYER.—Would you make that at least that much?

Mr. THATCHER.—Yes, I will make it at least.

Mr. SPRINGMEYER.—That will suffice, I think.

Q. Where did that road lead?

A. It led to the mill.

Q. Did it lead to any other place?

A. It went out around and came back into the road.

Q. Did it go to one of the main shafts of the company? A. Yes.

Q. To the mine itself? A. Yes.

Q. What do you mean by the "mine itself"?

A. Well, that is the old copper mine.

Q. Was that the place from which the ore was taken? A. Yes, sir.

Q. Was any of that ore treated? A. Yes, sir.

Q. Where was it treated? A. At the mill.

Q. And I believe you said these were group claims, and adjoined each other, did you not?

A. Yes, sir.

(Testimony of Joseph Jurey.)

Q. Now during the year 1898, do you know what work was performed on the Salt Lake No. 3 claim?

A. I do not; no, sir.

Q. I hand you this to refresh your memory; will you examine that [389] and see whether it will enable you to determine what the work was performed on the Salt Lake No. 3 in the year 1898. (Hands to witness.) A. I understand now, yes.

Q. Does that refresh your memory?

A. Yes, sir.

Q. What was the work performed in the year 1898—annual work—on the Salt Lake No. 3?

A. Repairing the pipe-lines, and houses, and so forth.

The COURT.—Of course you can do as you like about it, but is it necessary for you to prove the annual labor performed for the years prior to the time plaintiffs attempted to initiate their rights?

Mr. SPRINGMEYER.—It is necessary under our theory of adverse possession; otherwise we would not take up the time of the Court. I am sorry we have to be so detailed upon it.

The COURT.—Very well, go on; it is just as you like.

Mr. SPRINGMEYER.—(Q.) You say the work was repairing the houses and water-pipes?

A. Yes, pipe-lines, drain-pipes, and so forth.

Q. Was at least one hundred dollars' worth of work performed on the claim during that year for that purpose? A. Yes.

The COURT.—This is for the Salt Lake No. 3;

(Testimony of Joseph Jurey.)

you are going right through the Salt Lake No. 3 now?

Mr. SPRINGMEYER.—Yes. (Q.) Was it necessary to keep the pipe-lines and houses in condition to perform that work, Mr. Jurey? A. Yes, sir.

Q. During the year 1899, state what work was done on the Salt Lake No. 3, as annual labor.

A. It was the same, repairing the houses, pipe-lines, and so forth.

Q. What was the value of the work?

A. A hundred dollars.

Q. How did the pipe-line become out of order each year?

Mr. THATCHER.—Objected to as immaterial how it became out [390] of order, if the work was done.

Mr. SPRINGMEYER.—I want to show it was necessary.

Mr. THATCHER.—If they did it, and it was for the benefit of the claim, it is immaterial how it got out of order.

The COURT.—If you show it was for the benefit of the claim, it is all right.

Mr. SPRINGMEYER.—(Q.) Was this pipe-line for the benefit of the claim? A. Yes.

Q. In what respect?

A. To take the water into the houses, and so forth, the barn, and so forth.

Q. During the year 1900 state what was the character of the work done upon the Salt Lake No. 3.

A. That was the same.

(Testimony of Joseph Jurey.)

Q. Also repairing? A. Yes, sir.

Q. Now is it a fact or not, that the water pipes froze up during the winters?

A. Yes, sir, every winter.

Q. Did you have to do any work in the way of fixing the pipes? A. Yes, we had to dig them out.

Q. Had to dig the pipe-lines out? A. Yes, sir.

Q. About how much of the pipe-lines did you have to dig out?

A. Well, sometimes we would have to dig out about a mile and a half of it.

Q. On this claim, and on other claims?

A. All through the Salt Lake No. 3.

Q. In the year 1901 what was the nature of the work performed on the Salt Lake No. 3?

A. I think it was the same; I would not be sure.

Q. In fact, during all the first years you were there that was the nature of the work, was it?

A. Yes, sir.

Q. Were any of the buildings out of order during the years you were there? A. Yes, sir.

Q. What caused them to be out of order, if you know? [391]

A. Well, they would want new shingles, new batten put on them, or new floors.

Q. During any of those times do you remember any cloudbursts, or anything of that sort?

A. I remember one, yes.

Q. You remember one, you say? A. Yes, sir.

Q. During the year 1902 what was the nature of the annual labor? A. It was the same.

(Testimony of Joseph Jurey.)

Q. It was the same? A. Yes, sir.

Q. What was the value of that labor?

A. One hundred dollars.

Mr. THATCHER.—That was repairing the pipe-lines?

Mr. SPRINGMEYER.—Yes.

WITNESS.—And cleaning up around the houses.

Q. Now, during those years you say, also, that some one was living in the houses, do you not?

A. Yes.

Q. Was there anyone watching any of the buildings or any of the property of the company on the claims? A. Yes, sir.

Q. Where were the mining tools and implements of the company kept?

A. They were around the houses—in the houses.

Q. Where was the cooking of the company done?

A. In the boarding-house.

Q. Were the cooking utensils on the Salt Lake No. 3 claim? A. Yes.

Q. In the houses on the claim? A. Yes, sir.

Q. During the year 1903 will you please state what was the nature of the work performed on the Salt Lake No. 3 claim. A. Well, it would be the same.

Q. Was that the nature of the work during the years 1903, 1904, 1905 and 1906? A. Yes, sir.

Q. There was at least one hundred dollars' worth of work done on the repairing of those pipe-lines and houses and buildings, outside of work in the way of watching the buildings, or any of the [392] property of the company; is that correst? A. Yes, sir.

(Testimony of Joseph Jurey.)

Q. Was it the same sort of work during the years 1907, 1908, 1909, 1910 and 1911, if you know?

A. Yes, sir.

Q. Were you present during all those years?

A. Yes, sir.

Q. And in your opinion was the value of the work at least one hundred dollars per annum?

A. Yes, sir.

Q. In your opinion what was the value each year of the services of the men when watching the property of the company; is that correct? A. Yes, sir. was that at least one hundred dollars each year?

A. Yes, sir.

Q. Do you know what was the nature of the annual labor performed on the Evening Star claim in the year 1908?

A. I don't know as I can recall that.

Q. Do you recall a tunnel on any claims?

A. Oh, yes, the Eagle tunnel, that is what it was.

The COURT.—On the Evening Star it was the Eagle tunnel? A. Well, the work was done there.

Mr. SPRINGMEYER—(Q.) The work was done on the Eagle tunnel; that was during the year 1908?

A. Yes, sir.

Q. About how much was the value of the work performed on the Eagle tunnel during the year 1908?

A. One hundred dollars' worth.

Q. For the benefit of the Evening Star claim?

A. Yes, sir.

Q. Was there additional work performed on the tunnel that year? A. Yes, sir.

(Testimony of Joseph Jurey.)

Q. What was the total amount of work worth, in your opinion?

A. Well, there was six or seven claims worked in that tunnel that year the work was done in that tunnel.

Q. Was it the purpose of the company to perform work on each of the claims by the work in this tunnel during that year?

A. That was my instructions. [393]

Q. Do you know whether or not it was the idea of the management that the work on that tunnel would develop or enhance the mineral value of the Evening Star claim?

Mr. THATCHER.—Object to the idea of what the company thought would enhance it; the question is the fact.

Mr. SPRINGMEYER.—Our understanding of the law is this, if the work is misdirected, yet if it is done in good faith, it may be allowed as annual labor. Now I am simply trying to show in the opinion of the management of this company, however ill advised the work may have been, it was purposed for the benefit of all the claims constituting this group.

(Discussion.)

The COURT.—If you are going to establish the fact that the work off of the claim benefits the claim, it must be proven either by facts testified to by the witness, so that the jury themselves can see that the work tends to develop the adjoining claim; or if you cannot prove it in that way, and want to prove it by opinions, then the witness must be qualified to give

(Testimony of Joseph Jurey.)

his opinion, and give it; but if you simply put in the fact that he thinks the company believed it would tend to develop the claim, it is hearsay. The company, or whatever entertains the opinion, should come here and give the opinion.

Mr. SPRINGMEYER.—For the purpose of this record, I would like to ask one or two more questions, to ascertain whether the witness knows that was the purpose of the management; then I would like to take an exception to the ruling.

Mr. THATCHER.—Why not show the work was done for the years 1909, 1910 and 1911 on the Evening Star and Midas, and then the question can be brought up later, if you want to show that. In that way we can save time. [394]

Mr. SPRINGMEYER.—What was the last year?

Mr. THATCHER.—1908; that was on the Evening Star.

The COURT.—He said in 1908 there was one hundred dollars' worth of work done in the Eagle tunnel.

Mr. SPRINGMEYER.—(Q.) Where was the work performed for the Midas during the year 1908?

A. It was performed in the same place.

Q. In the same place? A. Yes.

Q. What was the value of that work?

A. One hundred dollars.

Q. At least one hundred dollars?

A. At least one hundred dollars, yes.

Q. What was the work performed for the Evening Star during the year 1909?

A. The Eagle tunnel.

(Testimony of Joseph Jurey.)

The COURT.—(Q.) That is for both claims?

A. Yes.

Mr. SPRINGMEYER.—(Q.) What was the value of that work? A. One hundred dollars.

Q. What was the annual work performed for the Midas during the year 1909?

A. One hundred dollars' worth.

Q. Where was that performed?

A. In the Eagle tunnel.

Q. What was the nature of the annual work performed during the year 1910 on the Evening Star claim? A. It was the same place.

Q. What was the value of it?

A. One hundred dollars.

Q. What was the nature of the work performed in that year on the Midas?

A. One hundred dollars' worth of work.

Q. And it was in the same place?

A. In the same place.

Q. And during the year 1911 was it the same as to both claims? A. Yes, sir.

Q. Now what was the character of this Eagle tunnel, Mr. Jurey?

A. It was a hard cross-cut run east into the mountain.

Q. It was a what? [395]

A. A hard cross-cut run east into the mountain.

Q. Do you know whether the tunnel was designed to open any vein or ore body?

A. Yes, sir, that is what it was for.

Q. Do you know whether that vein or ore body

(Testimony of Joseph Jurey.)

was believed by the management to run through the claims involved in this controversy? A. Yes, sir.

Mr. FORMAN.—We object to that, and move to strike out the answer of the witness.

The COURT.—At the present time I will strike that out. That is the very question. You may have your exception.

Mr. SPRINGMEYER.—I will take an exception to the ruling of the Court on the ground that the question is proper.

Q. How long was the Eagle tunnel in the year 1908, if you know?

A. It was in very near between three and four hundred feet.

Q. To what length was the tunnel extended, if you know, in the year 1911?

A. Well, I don't know; it was a pretty hard tunnel, and there could not have been much done in the time we had to do it.

Q. Was it difficult to work in that tunnel?

A. It was very hard, and the smoke would lay there.

Q. Did that tunnel have any connections with any other mining operations of the company?

A. No, sir.

Q. Did the company have any shafts near this tunnel, or not? A. No, sir.

Q. On what claim was the tunnel?

A. The tunnel was on the Eagle claim.

Q. How far distant from the Midas was the Eagle claim, about?

(Testimony of Joseph Jurey.)

A. It was about six hundred feet, I should say, east.

Q. Six hundred feet? A. Yes, east.

The COURT.—Six hundred feet east of what claim? A. The Midas. [396]

Mr. SPRINGMEYER.—(Q.) Do you know of your own knowledge, whether any dikes, veins or bodies of rock, which in your opinion might carry ore, ran from the Eagle claim in the direction of the Evening Star or Midas?

A. I don't know that I could answer that.

Mr. THATCHER.—Answer up, we can't hear you.

A. I say I don't know as I could answer that.

Mr. SPRINGMEYER.—(Q.) I understand then, that you, yourself, have not paid attention to the technical details of the work? A. No, I have not.

Q. On the scale carried on by the company; is that correct, Mr. Jurey? A. Yes.

Q. You simply did the work that you were directed by them to do?

A. That is just what I done, yes.

Mr. SPRINGMEYER.—Now, could we dispose of the question of whether, on the admission of these proofs of labor and the evidence I have adduced from the witness, these pay-rolls might be offered in evidence upon a proper showing that the witness was present when moneys were paid to the employees of the company, and that he saw the signatures of the men to these pay-rolls, upon each payment?

The COURT.—Suppose you could not prove that you had paid out over twenty-five dollars for your

(Testimony of Joseph Jurey.)

work on the Salt Lake No. 3 in any one year, but you could prove you had gone twenty-five feet through hard rock, and that it was worth seven or ten dollars a foot to go through that rock, and that it had tended to develop your mine, would you contend then that you had not proven your annual labor?

Mr. SPRINGMEYER.—No, that is, as I said before, merely evidential on the matter of the annual labor, but I say outside of that matter another question comes in. [397]

The COURT.—I don't think you have gone that far yet; I think you have simply shown he did a lot of work there that was worth a hundred dollars; you have not shown what the work was, and now you want to prove for a group of claims he paid out a large sum of money. I am not prepared now to allow that testimony. If you want to look up the authorities on that, I will be glad to see them; if you simply want a ruling on it, I make the ruling now. You can take your exception.

Mr. SPRINGMEYER.—We won't take any exception now; we will make the offer after we have examined these, and it has been determined whether they are admissible in evidence.

Q. Mr. Jurey, were men paid specially for watching this property at any time during your term of employment? A. I don't quite understand you.

Q. Were men paid specially for the watching?

A. Yes, sir.

Q. Do you know what they were paid a day?

(Testimony of Joseph Jurey.)

A. Three and a half.

Q. The watchmen were? A. Yes, sir.

Q. And were they watching the property during all the days of the year?

A. No, not all the days; they worked on the other claims, mining claims.

Q. They worked on the other claims part of the time? A. Yes.

Q. Could you say how much was paid to watchmen each year for the watching of the property on the Salt Lake No. 3 claim?

A. They were paid three and a half a day.

Q. Altogether, could you say? Was there at least a hundred dollars each year paid for that purpose?

A. Yes.

Q. For the Salt Lake No. 3? A. Yes, sir.

Q. Were these men specially named as watchmen, or were they not? A. Specially named?

Q. Yes; were they called miners, or were they called watchmen? [398]

A. They were called miners and watchmen.

Mr. SPRINGMEYER.—That is all we have until these proofs of labor are passed upon; then we want to make a formal offer of that.

Mr. PIERSON (JUROR:—I would like to ask when they say the Eagle tunnel is six hundred feet from the Midas, is that from the east line of the Midas to the west line of the Eagle claim, or would that be from the discovery monument to the discovery monument of those?

Mr. THATCHER.—Here is the east side line com-

(Testimony of Joseph Jurey.)

ing along here, of the Midas (indicating on Map "A"), and here is the Eagle tunnel right up there. You can see it on the patent plat.

Mr. SPRINGMEYER.—(Q.) Mr. Jurey, is this claim here a full width, the claim between the Eagle and the Midas? A. Yes, sir.

Q. Six hundred feet wide?

A. Six hundred feet.

Q. Then the mouth of the tunnel is over six hundred feet from the Midas claim, is it not?

A. It might be a little, but not much.

(The Court admonishes the jury, and at 4:40 P. M. an adjournment is taken until to-morrow, May 29th, 1915, at 9 o'clock A. M.) [399]

Saturday, May 29th, 1915.

Court convened 9 A. M.

(All parties present.)

Mr. SPRINGMEYER.—Have you examined those, General Thatcher? (Referring to Proofs of Labor.)

Mr. THATCHER.—Yes. Are you going to introduce testimony supplemental to this?

Mr. SPRINGMEYER.—I have introduced the testimony already with reference to all of it.

The COURT.—All of the assessment work?

Mr. SPRINGMEYER.—Yes; but I want the affidavits in to show *prima facie* that the work was done.

Mr. THATCHER.—Well, I can go over these pretty fast; I have marked them one, two, three, four, five and six.

To number one, if the Court please—proof of

(Testimony of Joseph Jurey.)

labor—we object upon the ground that it does not show the character of the work done upon the ground; nor does it affirmatively show when the work was completed.

As to number two we make the same objection.

We object to number three upon the ground that it was not filed within sixty days after the completion of the work, as required by the statute; work was completed July, 1913, and it was not filed until March 24th, 1914.

We object to number four upon the ground that it was not filed within sixty days after the work was completed, the work having been completed on the 15th day of August, 1913, and not filed for record by Mr. Ralph until the 24th day of March, 1914.

The COURT.—Otherwise you have no objection; it complies with the statute otherwise?

Mr. THATCHER.—Otherwise I think it does. To number five we [400] object upon the ground that it does not describe the character of the labor, work, or improvements made upon the ground, and does not show when the work was completed; therefore it is impossible to tell whether it was filed within sixty days thereafter.

We have no objection to numbers six and seven.

I make the further objection to the ones I have already objected to, upon the ground that they are certified copies by the district recorder, and the statute requires verified copies by a district recorder, rather than certified copies, to be admissible in evidence. A certified copy by the county recorder is

(Testimony of Joseph Jurey.)

good, but a copy by the district recorder must be a verified copy.

To these two exhibits I merely object on the ground that the character of the work affirmatively shown, is not such as to constitute annual assessment work, within the statute. I think possibly it is more a question of instruction to the jury, if the Court please.

Mr. SPRINGMEYER.—Will you argue the question?

Mr. THATCHER.—No, I will just refer to the statute, section 2424 of our mining laws, which requires them to be a verified copy by the district recorder.

Mr. SPRINGMEYER.—Section 5049 of the Revised Laws is the one on which we rely.

(Discussion.)

The COURT.—It seems to me in order to come within that statute, you must comply with it. So far as the verification is concerned, I don't attach very much importance to that, whether it is verified or certified; but I think the certificate should comply with the statute. The purpose evidently was that any one looking at that affidavit, could know what the work was, and could, by examining the affidavit, ascertain and determine whether a hundred dollars' worth of work had been done, provided [401] the affidavit was true. I think the certificate, no matter whether it be an original or a certified or verified copy, must set out the facts required by the statute before it can be admitted as evidence for any purpose.

(Testimony of Joseph Jurey.)

Those certificates to which no objection has been made except that they are certified instead of verified copies, I will admit without any further examination; but any certificate to which objection is made that it does not set out the facts required by the statute, I shall examine; and if it does not substantially set out the facts, I shall decline, I think, to receive it; at least that is my view now. I am simply giving you my views of the matter, and later, when you are prepared to do so, we will discuss them. You may proceed.

(Certificates numbered 6 and 7 are for identification.)

Direct Examination of Mr. JOSEPH JURY, Resumed.

Mr. SPRINGMEYER.—(Q.) Mr. Jurey, do you know a tunnel or adit called the Farrin adit, on the group of claims of which the Salt Lake No. 3, Midas and Evening Star are a part? A. Yes, sir.

Q. Where is that adit?

A. In No. 4—Salt Lake No. 4.

The COURT.—What is an adit?

A. A tunnel.

Mr. SPRINGMEYER.—(Q.) It is a tunnel which has not two mouths, as I understand it, technically, is it not? A. An adit is a bore.

Q. Into the mountain, the tunnel does go through?

A. Yes.

Q. When it goes through, strictly speaking, it is a tunnel; until it does go through, it is an adit, is not that correct?

(Testimony of Joseph Jurey.)

A. I guess that is correct; we used to call them tunnels, however.

Q. Properly they are called tunnels?

A. Yes. [402]

Q. How far from Salt Lake No. 3 is the mouth of the adit, approximately?

A. About two hundred feet.

Q. In what direction from the Salt Lake No. 3 is it? A. It is north of the Salt Lake No. 3.

Q. When was the work in that adit performed?

A. In 1908 and 1909.

Q. How long is the adit? A. A thousand feet.

Q. Are there any cross-cuts in the adit?

A. There is some drifting off from the cross-cuts.

Q. About how many feet?

A. Well, approximately about three hundred feet.

Q. Is there any other work in the tunnel?

A. There is an upraise in the tunnel.

Q. How long is the upraise?

A. About two hundred feet.

Q. How many men were employed in driving that adit, and doing the other work in connection with it?

A. There was twelve or fourteen men employed all the time.

Q. During the years 1908 and 1909?

A. Yes, sir.

Mr. THATCHER.—Do you mean by that Farrin adit—so the Court may know—the Eagle tunnel?

Mr. SPRINGMEYER.—No; this is north of the Salt Lake No. 3, beginning on the Salt Lake No. 4.

(Testimony of Joseph Jurey.)

We have another map we can put in evidence and show it later on.

Q. Was there any mineral exposed in that tunnel?

A. Yes, sir.

Q. What was it? A. Copper.

Q. Describe what character or grade of copper it was?

A. Well, the copper would average, I think, five per cent.

Q. In sinking the shafts on the Salt Lake No. 3, Midas and Evening Star in the year 1913, state whether or not any powder was used.

A. There was some powder, yes.

Q. Powder and fuse? A. Yes, sir. [403]

Q. In sinking all three shafts? A. Yes, sir.

Mr. THATCHER.—What shafts were those?

Mr. SPRINGMEYER.—The shafts sunk in what your men testified was the wash in 1913.

Q. Those shafts were sunk, one on each of the claims, prior to the location of the placer claims?

A. Yes.

Q. Of course if you used powder you also used fuse, did you not? A. Yes, sir.

Q. Do you know about how many boxes were used on all three shafts?

A. Well, I suppose there would be about a box of powder.

Q. About a box of powder? A. Yes.

Mr. DITREICH (JUROR.)—Fifty pounds?

A. Yes.

Mr. SPRINGMEYER.—(Q.) Was that on all

(Testimony of Joseph Jurey.)

three together, or on any one of them?

A. About fifty pounds on the three.

Q. Did you do blasting on all three?

A. Yes, sir, a little.

Q. On all three shafts? A. Yes, sir.

Q. Now, the shaft on the Evening Star was thirty-three feet deep on the perpendicular?

A. Yes, sir.

Q. You used powder on that, did you?

A. Yes, sir.

Q. On how much of the shaft, if you know?

A. Well, there was more used on that than there was on the others.

Q. Because it was a deeper shaft, is that true?

A. Yes.

The COURT.—(Q.) That was the shaft near the west side line of the Evening Star, was it not?

A. Yes, sir.

Q. Now at the times when the men were employed on the group of claims of which the Midas, Evening Star and Salt Lake No. 3 are a part, you said yesterday the men were paid for all the work on all the claims, is that correct? A. Yes, sir.

Q. And they were not paid separately for their work on any one [404] of the claims, or for the benefit of any one of the claims? A. No, sir.

Q. Were you present when the money was paid to the men for their work? A. Yes, sir.

Q. What did they do after being paid the money, in the way of giving vouchers or receipts, or anything of that sort? A. They signed the pay-roll.

(Testimony of Joseph Jurey.)

Q. Did you see them sign the pay-roll in each instance? A. Yes, sir.

Q. During all the time you were present?

A. Yes, sir.

Q. Do you know the handwriting of the men who signed? A. Why, yes, some of them.

Q. Do you know the signatures on the documents I hand you, dated April 30th, 1898? (Hands to witness.)

A. That is my father's there (indicating).

Q. Just state whether or not you know the signatures.

Mr. THATCHER.—Oh, I will admit he will testify that he knows them all.

Mr. SPRINGMEYER.—I am not sure that he will.

Mr. THATCHER.—Well, I will admit that he will. I will admit that he will identify them all.

Mr. SPRINGMEYER.—Then, if your Honor please, we offer these in evidence for the purpose of showing the value of the improvements on contiguous claims, and on each of these claims, during the years they have been owned by the predecessors in interest of the defendant, and by the defendant himself for the purpose of showing the value of the annual improvements.

The COURT.—The trouble with your offer is, you have done work on perhaps ten or fifteen or twenty claims, we don't know how many claims, there is nothing in evidence to show; perhaps you have done work on a hundred claims; and you are offering

(Testimony of Joseph Jurey.)

proof [405] as to the amount of money you have paid for work done on a hundred claims, say, to prove the value of a little work you did on one claim, or three claims, and it seems to me it is not of much help to us. And hereafter if there happens to be an appeal, and this record is taken up, the printing of pay-rolls covering practically your whole career in Copper Canyon—getting that great bundle of papers into the record for the Appellate Court, will be a matter of tremendous expense; and unless it is pretty clear it will be of some service, I do not like to put those things into the record.

Mr. SPRINGMEYER.—Let me ask one more question.

Q. How many claims are there in the Copper Canyon group? A. Twenty some odd.

Q. How many, twenty? A. Twenty.

Q. Twenty and some odd?

A. Yes, about twenty claims.

Mr. SPRINGMEYER.—I think that will put the matter in such shape as to clearly show its materiality; and particularly in view of the fact we have shown work upon the Eagle tunnel and upon the Farrin adit or tunnel. We have shown the building of this mill and leaching plant, the building of the road, and the building of the houses upon the Salt Lake No. 3 claim. The witness testifies that it is impossible for him, because of the property of the company, to segregate the money paid for work that might be for the benefit of each of the three claims; that the company did work and developed the prop-

(Testimony of Joseph Jurey.)

erty as a group property, and of course paid the men for all their services, regardless of what claim the particular work was performed upon. He testifies that the men were working for daily wages, and one day might be working for part of a day on one claim, and for part of a day on another claim; and under those circumstances we think it is certainly strongly evidential to show, not only the annual labor, but [406] to show good faith in the matter of continuous possession of these premises; and we offer these documents for that purpose as well.

Mr. THATCHER.—I object, if the Court please, on the ground they are incompetent, irrelevant and immaterial, and not tending to prove or disprove any of the issues in this case.

The COURT.—I am very much inclined to think so. You have not proven the amount of work that has been done; you have not offered to show what fractional portion of the work represented by this pay-roll was done on these particular three claims; and I do not see that it affords any assistance whatever. It is like the old-fashioned illustration, that a thing was as big as a piece of chalk; you have to know how big the chalk is before it becomes a standard. And here we have no standard; even though you show you paid out ten, fifteen, twenty, or even fifty thousand dollars for work during three or four years, you don't show what portion of that work was done on these claims, so that it can be determined what amount of your money was paid for

(Testimony of Joseph Jurey.)

the specific and exact work done on these claims.

Mr. SPRINGMEYER.—We have shown, on the contrary, it is impossible for us to do that.

The COURT.—Then that is your misfortune. I cannot see where it would be of the slightest assistance; it simply adds to the record and adds to the confusion.

(Discussion.)

The COURT.—I do not suppose there will be any question on the part of plaintiffs but that the amount of work done on that group of claims exceeded one hundred dollars for each claim.

Mr. THATCHER.—Oh, no.

The COURT.—The question is not the total amount of money which was expended, but the question is how much was expended on these three claims, or how much was expended for the benefit [407] of these three claims; and if it is to go in at all, it seems to me you may as well agree on that without putting in that immense record.

Mr. SPRINGMEYER.—If your Honor please, I can segregate it, if counsel wants it in that way. If that is the only objection we have the whole thing segregated for each year—the amount of wages paid to the employeees of the company. That does not include any supplies furnished, or any material furnished; merely the wages paid to the men for labor on this group of claims. I make that offer if the objection is to encumbering the record.

Mr. THATCHER.—I object to it generally on the grounds it is incompetent, irrelevant and immate-

(Testimony of Joseph Jurey.)

rial, and does not prove any of the issues in this case, whether you segregate it in years or not.

The COURT.—I will sustain the objection to the offer that is made now, and you may take your exception.

Mr. SPRINGMEYER.—We take an exception to the ruling of the Court on the ground that the evidence offered is competent, and of probative value in the case. We may make a formal offer later, in the absence of the jury, so as not to give them any information.

The COURT.—A formal offer?

Mr. SPRINGMEYER.—Mr. Ellis thinks we should not state before the jury what we propose to prove by these documents.

Mr. ELLIS.—State more fully the contents of the papers.

The COURT.—Very well.

Mr. SPRINGMEYER.—(Q.) Mr. Jurey, when did your father die? A. He died in 1903, I think.

Q. Did you live with him after you came to this country? A. Yes, sir. [408]

Q. How long? A. Over thirty years.

Mr. SPRINGMEYER.—I want to ask Mr. Jurey one more question on direct examination, if I may reserve that later on when the mail comes in.

Q. Do you know what those photographs represent, all on one sheet? (Hands to witness.)

A. Yes, sir.

Q. What are they?

A. That is the boarding-house; that is the cabin I

(Testimony of Joseph Jurey.)

lived in. (Indicating on photograph.)

Q. Are they the houses in Copper Canyon?

A. Yes, sir.

Q. Are these the houses that were there in 1898?

A. Yes, sir.

Q. When you went to the canyon? A. Yes, sir.

Q. Were they the houses you testified you lived in, and other men lived in, until the new houses were built? A. Yes, sir.

Mr. SPRINGMEYER.—We offer that photograph in evidence.

The COURT.—If there is no objection it will be admitted.

(Photograph marked Defendant's Exhibit No. 12.)

Mr. SPRINGMEYER.—(Q.) What is that photograph? (Hands to witness.)

A. That is the photograph of the houses as they are now—new ones and old ones.

Q. Were the houses in that condition prior to the location of the placer claims in 1913? A. Yes, sir.

Q. That includes then the new houses and the old houses as well? A. Yes, sir.

Q. And also the mill or leaching plant?

A. Yes, sir.

Mr. SPRINGMEYER.—We offer that in evidence. Any objection?

Mr. THATCHER.—What is the purpose of it?

Mr. SPRINGMEYER.—Simply to show the condition of the houses, and the condition of the ground, and to prove our actual possession, occupancy and use of these claims.

(Testimony of Joseph Jurey.)

Mr. THATCHER.—You can't prove that by showing there were houses on the ground and you lived in them. [409]

Mr. SPRINGMEYER.—Well, this might assist the jury.

Mr. THATCHER.—Well, if it will assist the jury, no objection.

(Photograph marked Defendant's Exhibit No. 13.)

Mr. SPRINGMEYER.—That is all except the one question we wish to ask after the mail arrives.

Cross-examination.

Mr. THATCHER.—(Q.) Mr. Jurey, you came there in '98? A. Yes, sir.

Q. And have lived there with the exception of one year, ever since? A. Yes, sir.

Q. You have lived in the canyon? A. Yes, sir.

Q. And upon this ground? A. Yes, sir.

Q. That is the first time you were ever in there, was in '98? A. No, I came in '78.

Q. You came in '78? A. Yes.

Q. But the first time you worked was in 1898, is that right? A. Yes.

Q. Did you live there from 1878 to 1898?

A. No, sir.

Q. Where did you live? A. In Galena.

Q. Had you been over and through there prior to 1897? A. Yes.

Q. You had been through there quite often in '96 and '95 as a young man? A. Yes, sir.

Q. There were a number of houses on that property at that time, were there not? A. Yes, sir.

(Testimony of Joseph Jurey.)

Q. Quite a number? A. Quite a number.

Q. Were all of the houses which are shown on this last large photograph on the ground at that time, in '98? (Referring to Defendant's Exhibit No. 12.)

A. The bunk wasn't there.

Q. The bunk-house is the one marked number 12 on this exhibit 12? [410] It is the photograph marked number 12 on this exhibit number 12?

A. Yes.

Q. With the exception of that house, the balance of the houses were on the ground in '98, and prior to 1897? A. Yes, sir.

Q. And prior to the time when the Salt Lake No. 3 was located? A. Yes, sir.

Q. Then at the time this claim was located they located the houses?

Mr. SPRINGMEYER.—Object to that as calling for the conclusion of the witness, and not proper cross-examination.

The COURT.—Well, it may go out.

Mr. THATCHER.—(Q.) And they did actually locate the houses on the claim when they located this Salt Lake No. 3? *Q.* Yes, sir.

Q. And they took them in within the boundaries of the claim? A. I suppose they did.

Q. Now, Mr. Jurey, you have been over the Salt Lake No. 3 quite a bit, haven't you, since 1898?

A. Yes, sir.

Q. You have been in that district all the time since that time? A. Off and on, yes, sir.

Q. As a matter of fact, you have lived on that

(Testimony of Joseph Jurey.)

ground every year but one year since 1898?

A. Yes.

Q. And you have lived on Salt Lake No. 3, haven't you? A. Yes, sir.

Q. Speak up so the jury can hear you; I don't want to do all the testifying. Now during the time from 1898 up to the present time, has there ever been any mining work done on Salt Lake No. 3?

A. Well, not as I can say that there has been.

Q. As a miner, you would not say there has ever been any mining work done on that Salt Lake No. 3?

A. Well, not since 1913.

Q. Well, from 1898, up to 1900, and the end of 1913, was the [411] Salt Lake No. 3 ever worked as a mine? A. No, sir.

Mr. SPRINGMEYER.—Object to that as calling for a conclusion of the witness. He can testify to what the work was, and let the jury determine whether it was worked as a mine or not. I move that the answer be stricken out; the witness answered while counsel's question was being put.

The COURT.—I think we have been over that work quite a number of times, but if you insist he can go over it again; and then he can give his opinion as to whether that is miner's work or not. I think in view of the latitude I have given in the examination of these witnesses, on the theory they were mining experts, for certain purposes, a question of that kind is permissible.

Mr. THATCHER.—I think it is permissible for another purpose; it is permissible for the very pur-

(Testimony of Joseph Jurey.)

pose to show that this property has never been held and worked as a mine.

The COURT.—No, he is simply characterizing the work now. He has testified in full to the work that has been done there; taking care of the houses, excavating for the mill, and so on, I think it is permissible for him to characterize that work, as to whether it was for the development of the mine or not, though it is for the jury to determine on the testimony whether it was actual assessment work, or not; or whether the mine has been worked or not. The objection will be overruled.

Mr. SPRINGMEYER.—We except on the grounds stated.

(The reporter reads the question.)

A. No, sir.

Q. That is right, is it? A. Yes, sir.

Q. In 1913 you said there was a shaft sunk in the southwest corner of the Salt Lake No. 3?

A. Yes, sir.

Q. How deep was that shaft sunk? [412]

A. Twelve or fifteen feet, I won't say for a foot.

The COURT.—(Q.) How many feet?

A. Twelve or fifteen feet.

Mr. THATCHER.—(Q.) That is in the Salt Lake No. 3? A. Yes.

Q. Do you remember your testimony on the former trial? A. No.

Q. Do you remember testifying on the former trial that it was only between ten and twelve feet deep?

(Testimony of Joseph Jurey.)

A. I might have, I could not tell you, it has been so long ago.

Q. You are guessing at how deep that shaft was; it might have been any place from ten to sixteen feet, according to your present recollection, is that right?

A. That is right.

Q. Your testimony on the former trial would probably be correct as to the depth of that shaft?

A. It might be, and this might be correct.

Q. It had only been sunk a little while before the last trial? A. It was sunk in 1913.

Q. And you testified here in December, 1913. You said there was powder used in that shaft.

A. There was a little, not much.

Q. As a matter of fact, that shaft is all in the wash, isn't it? A. It is, yes, sir.

Q. It never reached hard rock? A. No, sir.

Q. And never reached rock in place?

A. No, sir. Well, we used a little powder to shake it up once in a while.

Q. You have done some placer mining, haven't you? A. Not very much; a little.

Q. You have been doing it for two years, haven't you? A. No, sir.

Q. Haven't you been working over there with Mr. Ralph's brother, [413] working a placer mine?

A. No, sir; I left when Mr. Ralph's brother came there; I went back to Copper Canyon.

Q. Aren't you in Copper Canyon? A. Yes.

Q. Aren't you working a placer property there now?

(Testimony of Joseph Jurey.)

A. I have been working there, for, I guess, about six weeks.

Q. Mr. Joseph Ralph? A. Mr. Ed. Ralph.

Q. Were you working before that for him?

A. No, sir.

Q. You haven't done any placer mining before that? A. No, sir.

Q. And you have been working in this placer mine for about six weeks? A. For about six weeks.

Q. In sinking a shaft in the wash through that district you use powder, don't you? A. Yes.

Q. And you use powder in going along the bedrock, in taking out the gravel? A. Yes.

Q. Now you testified there was a small shaft, that is the small shaft in Salt Lake No. 3, which is in the wash? A. Yes.

Q. You testified in the northwest corner of the Midas, right over here (indicating on map "A"), there was a small shaft? A. Yes.

Q. How deep was that?

A. That one was sixteen feet.

Q. Four by six by sixteen feet, about; what was that sunk in? A. In the wash.

Q. All of it in the wash? A. Yes, sir.

Q. It didn't expose hard rock in any place, did it?

A. No, sir.

Q. Now that makes the Salt Lake and the Midas; now, what shaft in 1913 was sunk upon the Evening Star? A. The shaft on the west line.

Q. On the west line; how deep was that shaft?

A. That shaft was thirty-three feet deep vertically

(Testimony of Joseph Jurey.)

and twenty [414] feet on the incline.

Q. Twenty feet on the incline, and thirty-three feet vertically; was that all in wash?

A. All in wash, yes, sir.

Q. When you got to the bottom of that, what did you find there? A. Bedrock.

Q. Did you pierce bedrock?

A. We followed on the bedrock.

Q. You followed on the bedrock and the drift or incline which you made there from the bottom of that shaft was all on the bedrock, was it not?

A. Yes, sir.

Q. You didn't go into the bedrock? A. No.

Q. But just followed down it. What was done in that shaft? What was the purpose of it?

A. It was for the assessment work for the year 1913.

Q. What kind of mining was it?

A. Well, that would be placer mining, I should call it.

Q. So those were the improvements that were made during the year 1913—that was the mining that was done in the year 1913, prior to the location of these placers upon this ground? A. Yes.

Q. And that was the only work that was done on that ground that year, wasn't it?

A. Well, on the Salt Lake No. 3 was repairing the pipe-lines and houses.

Q. Well, you used to repair that pipe-line every year? A. We had to, yes.

Q. That was a pretty good pipe-line. Now, did

(Testimony of Joseph Jurey.)

you ever go over the monuments on the Salt Lake No. 3? A. Yes, sir.

Q. In 1898? A. In '98.

Q. That was the first time?

A. That was the first.

Q. Did you go all around them? A. I did.

Q. And you knew where they were at that time?

A. Yes.

Q. You know where they are now? A. Yes.

Q. Did you know where they were at the time the placer boys came [415] in there and located the Guy Davis placer? A. Yes, sir.

Q. And are they in the same condition now, and in 1913, when the placer claims were located, as they were in '98, when you first saw them? A. Yes, sir.

Q. Are they accurately at the same points, or approximately at the same places?

A. Approximately.

Q. Approximately? A. Yes.

Q. You don't want to say that they are exactly at the same points? A. No.

Q. I call your attention to a point marked "Discovery Monument Salt Lake No. 3 Lode," that is near the road and up near one of the upper houses; what is the character of the material about that point, about two hundred and fifty feet from the north end line, right in the center of that claim?

Mr. SPRINGMEYER.—We object to that on the ground it is not proper cross-examination; he has not testified to the character of any material in that neighborhood.

(Testimony of Joseph Jurey.)

Mr. THATCHER.—Well, they have tried to show a discovery by this witness.

Mr. SPRINGMEYER.—We object to it on the further ground, that the plaintiffs are estopped to deny the mineral character of these claims on the ground that they have relocated the property; on the further ground that it is a matter of proof upon their part on direct evidence, to show the nonmineral character of the claims.

The COURT.—I will sustain the objection to that. I don't remember of any testimony by this witness with reference to that matter in his evidence in chief. That is my recollection; and I am including the testimony on that ground; that it is not within the examination in chief. If you have any doubt as to the correctness of that you had better look up the record.

Mr. THATCHER.—I don't think there is any testimony on his [416] part as to the character of the ground, or anything with reference to this, except that he had lived on there fourteen years.

The COURT.—Very well, if you find to the contrary you can take it up again.

Mr. THATCHER.—I think I can reach it another way, if the Court please. (Q.) Now, Mr. Jurey, you were one of the locators of the Midas, and Evening Star, were you not? A. Yes, sir.

Q. When did you locate those claims?

A. In 1907.

Q. What day, do you remember?

A. I don't remember, no.

Q. The location certificate correctly states it, how-

(Testimony of Joseph Jurey.)

ever? A. Yes, sir; that states it.

Q. And you have been over the ground, have you, since that time? A. Yes, sir.

Q. And you have located the claim, did you put up the monuments? A. Yes, sir.

Q. Immediately after you posted your notice?

A. Yes, sir.

Q. Within a day of two anyway? A. Yes.

Q. You have been over the ground since that time?

A. Yes, sir.

Q. Are the monuments in the same position they where when you put them up? A. Yes, sir.

Q. As a matter of fact, within a few days after you monumented the ground, Mr. Liddell came out and surveyed it, did he not? A. Yes.

Q. For Mr. Farrin, and took the same points where you had put up your monuments?

A. Yes, sir; as near as I know.

Q. You went around with him, didn't you?

A. Yes.

Q. You saw him do it?

A. Yes, I saw him do it.

Q. Are the monuments on the Midas in the same position to-day that they were when you put them up on the ground? A. Yes, sir.

Q. And is the location monument on the Midas at the same point [417] that it was when you put it up? A. Yes, sir.

Q. You have been on the ground lately?

A. Yes.

Q. You have seen the discovery monument of the

(Testimony of Joseph Jurey.)

Midas? A. Yes, sir.

Q. What is it now? A. Where is it?

Q. What is it? A. The Discovery?

Q. Yes. A. It is a shaft.

Q. No, the discovery monument, what is it made out of?

A. Oh, it is made out of rock, dirt and post.

Q. No, that was the original; what is the discovery monument made out of now, Mr. Jurey; I don't want you to misunderstand me.

A. I don't quite understand.

Q. Have you been to the location monument of the Midas as it stands on the ground now, or did stand in 1913, you know where that is? A. Yes, sir.

Q. What kind of a monument is it?

A. Well, it is a rock monument.

Q. Isn't it a wooden monument, with a white painted post? A. Yes.

Q. With "Location Discovery Midas" on it?

A. Yes.

Q. That is not the original monument that was put up, is it? A. That was just the discovery.

Q. Well, is that the same one that is there now?

A. Yes, sir.

Q. How long is it since you have been up there to the discovery monument of the Midas?

A. Oh, about a month or six weeks ago.

Q. Just tell the jury what the discovery monument of the Midas claim looked like when you were up there six weeks ago.

A. It is a white post and a mound of rock and dirt.

(Testimony of Joseph Jurey.)

Q. It is a white post and a mound of rock and dirt?

A. Yes, sir.

Q. And that is in the same place that it was when you originally posted the notice on the ground, and put the monument? [418] A. Yes, sir.

Q. Is there anything where this white post is on the Midas to-day, and where you saw it a month ago—is there anything in the nature of hard rock there?

A. Well, I can't say there is.

Q. There is not? A. No.

Q. As a matter of fact, all around that there is nothing but wash, is there? A. No.

Q. It is at least a hundred and fifty feet to any hard rock from the monument, isn't it?

A. Well, it is quite a ways.

Q. It is quite a ways; well, how far; where is the nearest hard rock from there?

A. Well, the nearest is the location work.

Q. Location work, all right; where is the location work on the Midas?

A. Along very close to the east line.

Q. Of the side line? A. East side line.

Q. About how far between the present location monument and the east side line is that location work? A. Well, I never measured.

Q. Did you ever step it off? A. No, sir.

Q. Well, you are a pretty good miner and prospector; could you make a guess at it; would you say it is about a hundred and fifty feet?

A. A hundred or a hundred and fifty feet.

Q. It is at least a hundred and fifty feet, isn't it?

(Testimony of Joseph Jurey.)

A. Yes, I should say it was.

Q. That is the nearest hard rock to that monument any place around on that place?

A. Well, no, I could not say that.

Q. Well, it is the nearest that you know of, anyway?

A. Yes, the nearest thing that looked like a ledge.

Q. The nearest thing that looked like a ledge?

A. Yes.

Q. Is a hundred and fifty feet from that location monument? A. About.

Q. It is up at the discovery hole? [419]

A. My brother and a fellow named William Hawke and William T. Jurey and myself done the location work.

Q. You did the location work. What is a running cut; you are a miner?

A. Well, it is a cut along the surface.

Q. A running cut is a cut along the surface; it is generally open at one end, isn't it? A. Yes.

Q. And runs to a face at the other? A. Yes.

Q. That is your description, as a miner, of a running cut? A. Yes.

Q. Is that right? A. Yes.

Q. You don't want to change that any?

A. There are ways of making a cut.

Q. I am talking about a running cut.

A. That is a running cut.

Q. You can walk right into a running cut, and walk right up to the face, that is what you call a running cut? A. Yes.

(Testimony of Joseph Jurey.)

Q. That is the way you start into a tunnel, is a running cut, isn't it, and approach to a tunnel?

A. Yes.

Q. What kind of work was the discovery work on the Midas claim, what kind of work was it?

A. It was sinking a shaft, sinking a hole about eight feet deep, ten feet long, and about six feet wide.

Q. It was a good big hole, was it?

A. A good big hole.

Q. That was all in hard rock, too, wasn't it?

A. Yes.

Q. Quartzite? A. Porphyry and quartz.

Q. Quartzite, porphyry and quartz, all in that hole? A. Yes.

Q. And that was the discovery work on the Midas?

A. Yes.

Q. You said when you went on the Midas you found a cut or shaft, and located that—was that the one you located?

A. Yes, sir; that is the one we done our work on.

Q. Did you find one on the ground?

A. Well, there was a [420] very small one.

Q. Where?

A. Right there; it showed up a little copper.

Q. And you sunk that deeper, did you?

A. We sunk it down.

Q. How deep was it when you found it?

A. It was very shallow, maybe a foot; it wasn't over a foot when we went there.

Q. It wasn't over a foot deep when you got there, a little bit of a fellow?

(Testimony of Joseph Jurey.)

A. A little bit of a fellow.

Q. And you sunk it down to a depth of ten feet?

A. Somewhere along there.

Q. That point is about a hundred and fifty feet east of the location monument on the Midas?

A. Yes, sir.

Q. Which way did the Midas run.

A. It turns north and south.

Q. And how far each way from the discovery monument, do you remember?

A. About seven hundred and fifty feet, I should think, north.

Q. Seven hundred and fifty feet each way?

A. Yes.

Q. Seven hundred and fifty feet north from the discovery monument and seven hundred and fifty feet south from it, is that right? A. That is right.

Q. Do you know a cut on the Midas claim about six hundred feet northerly from the location monument? A. Six hundred northerly?

Q. Yes, about six hundred feet northerly.

A. There is a cut over in that ravine there, on the north of that.

Q. Well, is that about six hundred feet north of the location monument? A. Yes, it is.

Q. What kind of a cut is that—that is a running cut, isn't it? A. Yes.

Q. It runs into the bank?

A. It runs into the bank. [421]

Q. You can walk right into it? A. Yes.

Q. It runs on the wash?

A. It is run on a little stringer or vein.

703

(Testimony of Joseph Jurey.)

Q. Isn't it a fact that is run all in the wash, Mr. Jurey? A. The one I have reference to isn't.

Q. It isn't. A. No.

Q. How big was it?

A. Well, it was about ten or twelve feet long.

The COURT.—Can you show it on the map?

A. I don't know as I could; I ain't much in picking out things on a map.

Mr. THATCHER.—(Q.) It is about ten feet long and what else give the balance of the dimensions.

A. About—well, I could not say just now, maybe twelve feet long and six or eight feet deep, about four feet wide.

Q. About four feet wide? A. Yes.

Q. Wasn't that the discovery cut that you did for this Midas claim? A. No, sir.

Q. It was not? A. No.

Q. This is your handwriting, is it now? (Shows paper to witness.) A. Yes, sir.

Q. If you now recollect that it was a ten-foot shaft, one hundred and fifty feet east of the claim, and at the time you made your location certificate you described it as a running cut six hundred feet north of the location monument, which would probably be correct?

A. We was going to start to make—

Read the question. (The reporter reads the question.) A. Yes, sir.

Q. Which would? A. That cut.

Q. Your running cut? A. Yes.

Q. Then you were probably mistaken in your tes-

(Testimony of Joseph Jurey.)

timony to-day or yesterday, when you said that the discovery work was a shaft, [422] four by eight by eight or ten, one hundred and fifty feet east of the location on the Midas; instead of that, you want the jury to understand that the original discovery work on the Midas claim was a running cut, about six hundred feet north of the discovery monument, is that right?

A. No, that there shaft is the discovery of the Midas.

Q. All right, that shaft is the discovery of the Midas? A. Yes.

Q. That is the one you found when you first went there?

A. That is a small hold about a foot deep; it showed up copper stains, and stuff like that, a little porphyry and quartz.

Q. Porphyry and quartz and copper stains and quartzite; it had them all in?

A. It had them all in there.

Q. Tell me where the discovery work was done on the Midas claim?

A. That hole up on the east line.

Q. On the east line, that was the discovery work on the claim? A. Yes, sir.

Q. Then your certificate does not truly state the facts when it says that your discovery work is a running cut six hundred feet north of your discovery monument; which one is true, your discovery certificate or your testimony?

A. Well, the testimony is correct, because I know

(Testimony of Joseph Jurey.)
where I done the work.

Q. Your testimony is the best? A. Yes.

Q. The certificate you made at that time was wrong? A. It was wrong.

Q. It was not true?

A. The way it was put, it wasn't true, of course.

Q. The certificate which you have been reading from, and to which I called your attention, was Defendant's Exhibit No. 11, the certificate [423] of location of the Midas lode, that is the one I was just calling your attention to? A. Yes, sir.

Q. Now let us go over the Evening Star; do you remember the Evening Star claim? A. Yes, sir.

Q. And you put up the monuments on the Evening Star? A. Yes, sir.

Q. How many monuments did you put up?

A. Six.

Q. What were they?

A. Corners and side centers.

Q. Four corners and two side centers?

A. Yes, sir.

Q. And was that claim afterwards surveyed?

A. Yes, sir.

Q. Who surveyed it? A. Mr. Liddell.

Q. Mr. Parker Liddell, who is in court here?

A. No, Mr. Charles Liddell, his brother.

Q. Charles surveyed it, did he? A. Yes, sir.

Q. How long after you put up the monuments did they survey it?

A. Well, I think it was in 1908 they surveyed.

Q. 1908, the next year, was it?

(Testimony of Joseph Jurey.)

A. The next year or the latter part of that year.

Q. Or was it 1909?

A. 1908; you see it was located in 1907, and after Mr. Farrin—we deeded them over to Mr. Farrin, Mr. Liddell came out and surveyed them.

Q. When he came out and surveyed it, did you go around the claim with him?

A. When he done the surveying?

Q. Yes. A. Yes.

Q. Showed him the monuments?

A. Showed him the monuments.

Q. And he put up his stakes and location certificates at the places you pointed out to him?

A. As near as he could.

Q. Are the monuments on the Evening Star in the same position on the ground now as they were when you first put them up?

A. Well, they might have been moved a foot or so; there was no conflict at that time, you know, a person could move in or out. [424]

Q. They might have been moved a foot or so for the purpose of lining up the survey, but approximately within a very few feet they are in the same place on the ground now, and were in the same place in 1913, when these boys came on the ground, as they were when you located? A. Yes.

Q. And Mr. Liddell surveyed it?

A. And Mr. Liddell surveyed, yes.

Q. Is the discovery monument in the same place on the claim as it was when you first put it there?

A. Yes, sir.

(Testimony of Joseph Jurey.)

Q. What is the discovery monument that is on the ground now?

A. The description of the monument?

Q. Yes, what is the description?

A. It is a white post in a mound of stone and dirt.

Q. The original one you put up was a rock monument, and when Mr. Liddell came out and surveyed it, he put up a white painted post? A. Yes.

Q. He just tore down the rock monument, did he, and put the post in place of it?

A. Yes, put the post in place.

Q. Did he put it right in the same place the monument was? A. Very near.

Q. Within a few feet? A. Yes, a few feet.

Q. Well, how many do you mean by a few, two or three, or five or six, or what?

A. Five or six feet.

Q. It wasn't moved fifty or sixty or a hundred feet, was it? A. No, sir.

Q. It wasn't moved seven hundred feet, was it?

A. No, sir.

Q. So I might say your testimony is that the monuments on this claim, the Evening Star, including the location monument, are within a very few feet of the location monument, as placed by you when you located the ground? A. Yes, sir.

Q. Where is the discovery monument on the Evening Star? [425]

A. Where is the discovery monument?

Q. Yes, was it in the middle of the claim, end of the claim, or where?

(Testimony of Joseph Jurey.)

A. It was about the middle of the claim.

Q. Do you remember what it claimed; do you remember whether it claimed seven hundred and fifty feet each way?

A. I think it does, yes.

Q. You think it does? A. Yes, sir.

Q. You said when you made your discovery there you discovered a cut, and located the cut?

A. Yes, sir.

Q. How big was that cut?

A. It was just a very small cut when we went there.

Q. Small? A. Small cut, yes.

Q. Young fellow? A. Young fellow.

Q. About how big; can you give us any idea how big?

A. Well, it wasn't over four feet long; there was just a little dirt threw out of it—a little dump.

Q. How wide was it?

A. Just a little small space shovelled out, and we done our location work there.

Q. Give me some idea; you saw it, and you discovered mineral, and you can remember all about the mineral you found in it, can't you tell about the size of this cut? A. Before we worked it?

Q. Yes, before you worked it, before you hurt it any.

A. Just a small cut with a little dirt threw out, wasn't over four feet long, and two or three feet wide.

Q. Four feet long and two or three feet wide; how

(Testimony of Joseph Jurey.)

deep, about one inch deep?

A. About a foot deep, maybe.

Q. That is about as little as we can get, and get a cut. Well, tell me something about what it looked like; what did that cut look like?

A. The character?

Q. Yes. A. Well, it looked like porphyry. [428]

Q. What was the color of it?

A. It was white and yellow.

Q. White and yellow—any other stains in it?

A. Red stains, iron stains.

Q. When were you to that cut last?

A. I was there on the 11th day of this month.

Q. Where was the location monument with reference to that cut? A. It was north.

Q. North? A. Yes, it would be north.

Q. Didn't you tell Mr. Springmeyer yesterday it was right on the cut?

A. It was on the north, just on the north end of the cut.

Q. Oh, on the north end of the cut? A. Yes.

Q. Well, the monument was placed right on the north end of the cut? A. Yes.

Q. Which way did the cut run? A. North.

Q. And it stood right up just above the face of the cut, did it? *Q.* Yes.

Q. Right up over the top of it? A. Yes, sir.

Q. It ran almost due north and south?

A. Very near.

Q. That is the only cut on the ground that runs

(Testimony of Joseph Jurey.)

north and south, isn't it? A. Yes, sir.

Q. The other cut on that ground runs east and west, doesn't it? A. Yes, sir.

Q. You said the color of it was white?

A. Well, yes, mostly white.

Q. That is that white dump away down in the south end of the claim, isn't it?

A. Yes, that is the white dump.

Q. That is the only one that runs north and south, and the only one that is white? A. Yes.

Q. And it is clear down in the south end of the claim now, isn't it? A. Yes. [427]

Q. And that is where your location monument was placed?

A. That is where the location work was done.

Q. That is where your location monument was placed, too, isn't it; didn't you tell me just a minute ago— A. (Intg.) Oh, yes.

Q. Do you know a cut that now exists on that ground, about seventy-five feet to ninety feet east of the present discovery monument on the Evening Star claim? A. Running east?

Q. No, not running east, but it is east?

A. Well, the cut, I mean.

Q. Yes, it is both east and running east.

A. Yes.

Q. How long was that cut in 1913, when these placer claims were located?

A. Well, I think it was about twenty feet.

Q. Twenty feet long? A. Yes.

Q. How wide?

(Testimony of Joseph Jurey.)

A. Well, I could say six or seven feet wide.

Q. And how high, what was the face; it ran to a face, didn't it?

A. The face would be about eight feet.

Q. Started from the west and ran east about twenty feet to a face about eight feet, and was about six or seven feet wide?

A. I should say about that, yes.

Q. When was that work done?

A. That work was done in 1912.

Q. What was it for, what was its purpose?

A. For the assessment work for 1912.

Q. For the assessment work for 1912?

A. Yes, sir.

Q. Going back to the discovery monument, you know where the discovery post is on the ground now?

A. Yes.

Q. Is there anything in the nature of hard rock there? A. I can't say there is.

Q. As a matter of fact, you can't say there is not?

A. No, I can't say there ain't.

(RECESS FOR FIVE MINUTES. AFTER RECESS.) [428]

Q. You know where the discovery post on the Evening Star is now? A. Yes, sir.

Q. Around that post, and all around it, is wash, is it not? A. Very much.

*Q. Very much.*

Q. There is no cropping exposed near that discovery monument? A. No, sir.

Q. How far is it to the nearest hard rock, what

(Testimony of Joseph Jurey.)

you as a miner would call hard rock? Speak up a little bit, I don't think the jury can hear you.

A. Well, I think the cut running east and west would be the nearest hard rock?

Q. How far is that from the present discovery monument? A. Well, I would say a hundred feet.

Q. About a hundred feet. A. Yes.

Q. And that cut starts to the west and runs east?

A. Yes, sir.

Q. Is that right? A. That is right.

Q. What is that cut run in?

A. Well, I would call it prophyry and iron.

Q. Porphyry and iron, any quartzite in it?

A. There might be, I never tested it.

Q. You never tested it? A. No.

Q. From your experience as a miner, what would you say that was—would you say there was any quartzite in it?

A. There may be, I never examined it.

Q. What is the color of it? A. Red.

Q. Now taking the two cuts, the one at the south is a white cut, and the one in the middle of the claim as it stands now, is a red cut? A. Yes.

Q. And you can easily tell them if you take a look at them, they are easily distinguished? A. Yes.

Q. And this one was run in 1912 as the assessment work for that year? A. Yes, sir. [429]

Q. This other cut was the one at which you posted your discovery monument? A. Yes, sir.

Q. Then the discovery monument on that claim

(Testimony of Joseph Jurey.)

has been moved north about six hundred feet, has it not?

A. Well, the surveyor put that discovery monument there when he surveyed it.

Q. Then the present discovery monument is six hundred feet, approximately, north of where you originally placed it on the ground?

A. I don't think it is quite that far; it could not be over two or three hundred.

Q. You don't think it is over two or three hundred? A. I don't think so.

Q. Well, there are only two cuts on this claim, aren't there? A. Yes, sir.

Q. Now or any other time? A. No, sir.

Q. Was there ever any more?

A. Was there ever any more?

Q. Yes.

A. Well, there is just that work down there on the west side line.

Q. Well, that is not a cut, that is a shaft; there are just two cuts on the ground? A. Yes, sir.

Q. And there is a shaft which is thirty-three feet deep, with an incline from the bottom? A. Yes.

Q. But there are only two cuts on there?

A. Yes, sir.

The COURT.—(Q.) You say there are only two cuts on the ground?

A. Yes, sir.

Mr. THATCHER.—(Q.) Now, Mr. Jurey, when you made this discovery in this little cut that you found, what did you find there on the Evening Star?

(Testimony of Joseph Jurey.)

A. Well, I took it to be porphyry and quartz.

Q. Porphyry and quartz, what was in it—did you ever have it [430] assayed?

A. I never had it assayed, no.

Q. Ever pan any of it? A. No, sir.

Q. Never tested it in any way?

A. No, sir, I never did.

Q. It was merely your inference that it carried values, or was mineralized?

A. That was all, yes, sir.

Q. Did you say there was some copper stain in that cut, the white one, or was that on another one?

A. I never *taken* particular notice of it; there may be a little copper stain there.

Q. As a matter of fact, you merely guessed at it when you said it might carry gold, silver, copper stain, and other precious metals?

Mr. SPRINGMEYER.—I object on the ground it is not proper cross-examination, and based on a state of facts not in evidence; he did not say on his direct that he guessed at it.

Mr. THATCHER.—That is what I am asking him.

The COURT.—He gave his opinion in his direct; it seems to me on cross-examination counsel has a right to ascertain how firm that opinion is. I will allow the question. I presume the witness when he uses the word "guess" understands just what it means; of course there is a difference between a guess and an opinion.

(By direction the reporter reads the question.)

(Testimony of Joseph Jurey.)

A. Well, I thought it might carry by the looks of it.

Mr. THATCHER.—(Q.) From the looks of it?

*Q.* Yes; I never done this work for myself, I done it for Mr. Farrin; that was his idea of having that work done there; I done it for myself—I deeded it over to him—but he picked the place for me to do it.

Q. You had some kind of arrangement with Mr. Farrin when you located this ground, is that right?

A. Well, somewhat.

Q. And while your name went on it, Mr. Farrin had an interest in [431] it?

A. We deeded it over to Mr. Farrin.

Q. He had you locate it; he had an interest, didn't he? A. No.

Q. Well, at least he pointed out the place for you to do this work? A. Yes, he did.

Q. And it was upon his judgment rather than your own, that you picked this point as being mineral in character? A. Yes, sir.

Q. It was not your own judgment that picked that place out?

A. Well, that was about as good a place at that time to work on as any we could find.

Q. As any you could find there? A. Yes.

Q. Well, you thought that it was, but it was his judgment? A. It was his judgment.

Q. And he picked that place out, and not you?

A. Yes.

Q. Now on the Midas, you said you made a discovery on the Midas; what did you find there?

(Testimony of Joseph Jurey.)

A. Quartz, copper stains, porphyry.

Q. Quartzite? A. I could not say

Q. Well, you know porphyry, do you?

A. Yes, I know porphyry.

Q. And you know quartz. A. Yes.

Q. But you don't know quartzite?

A. Well, there is so many kinds.

Q. Oh, you have been listening to the petrologists, have you? A. No, I haven't.

Q. What was in it—anything?

A. In the location?

Q. In the rock? A. I could not say.

Q. You could not say whether there was anything in it or not?

A. I could not say whether there were any values in it or not.

Q. You never assayed it and never panned it?

A. No, sir.

Q. And never made any tests of it? A. No, sir.

Q. Have you any judgment as to whether or not it did contain anything, Mr. Jurey?

A. As to the looks, I thought it might. [432]

Q. Thought it might? A. Yes.

Q. And that is about as far as you are willing to go, isn't it, that it might carry? A. Yes.

Q. And that was your idea at that time, wasn't it, that it might carry?

A. Of course I could not tell just by looking at it.

Q. You made the affidavit of annual expenditures on the claim for the Salt Lake No. 3, did you, for the year 1898?

(Testimony of Joseph Jurey.)

Mr. SPRINGMEYER.—I believe Mr. Hicks made that.

Mr. THATCHER.—Oh, yes, I guess you are right, Mr. Springmeyer.

Q. You said that the pipe-line in '99 froze up, and the work in 1899 was on account of repairing the pipe-line that froze? A. Yes, sir.

Q. How long were they doing that work?

A. Oh, well, there are some times it takes as high as six weeks to fix up the pipe-line.

Q. Do you remember how long it took in 1899?

A. No, I could not say.

Q. You made an affidavit at that time?

A. Well, with reference to fixing that pipe-line, we had to do a hundred dollars worth of work—so many days.

Q. Did you say that was because it froze up?

A. It froze every winter.

Q. Every winter? A. Yes.

Q. And as soon as spring opens up do you do the work?

A. When spring opens, I did this spring, yes; other springs other men dug it out; dug it when there were parties working there, when it froze in December or January, or any time.

Q. And the annual labor on Salt Lake No. 3 for a number of years consisted in fixing that pipe-line after it froze the previous winter? A. Yes.

Q. You testified in this case before, did you not?

A. I did. [433]

Q. Didn't you testify that the annual labor on

(Testimony of Joseph Jurey.)

the Salt Lake No. 3 was done in the Eagle tunnel for the years 1899, 1900, 1901 and so on, down to 1912?

A. What was the question?

(The reporter reads the question.)

A. Some years it was done in the Eagle tunnel; we used to put them in with the group of claims, Salt Lake No. 3.

Q. Didn't you testify in the former trial that the only time that the work was ever done on the Salt Lake No. 3 was in 1912?

A. I might have, I could not swear; I have forgotten.

Q. Calling your attention to the record at page 76, of the former trial of this case, to wit, William Lamont versus Guy Davis, tried in December, 1913, did you on the trial of that case testify as follows: "Q. What work did you do in 1912? A. Grading out the mill and road. Q. Grading out the mill and road; is that the only work that you did during 1912 upon the Salt Lake number 3? A. Yes, sir. Q. Since 1899, then, as I understand you to say, the only time that the annual assessment work has ever been done upon the Salt Lake number 3 proper, was in 1912, in grading out for the mill? A. That is the only time I have ever seen it done." Is that correct, did you so testify?

A. I did if it is there, sure.

Q. Is that correct?

A. Well, we used—you see this here pipe-line,—we had to do so much work on number 3 every year, and then if it wasn't enough done on that pipe-line,

(Testimony of Joseph Jurey.)

we used to put the claim in with the group on the Eagle tunnel.

Q. That is your explanation of that testimony?

A. Yes.

Q. Mr. Jurey, you don't know very much about maps? A. No, I don't.

Q. You don't like to testify from maps?

A. No.

Q. Now, where is the Eagle tunnel with reference to Salt Lake No. 3?

A. In what direction, do you mean? [434]

Q. Yes, sir.

A. It is in, I should say, a southeasterly direction.

Q. Well, generally, it might be said to be east?

A. Yes.

Q. That is just generally, because they are all on some particular side. What is the height of the mouth of that tunnel, the altitude of the mouth of the Eagle tunnel, with reference to the Salt Lake No. 3?

A. Well, I should say it is a hundred feet higher.

Q. A hundred feet higher. What direction does the Eagle tunnel run?

A. It runs in an easterly direction.

Q. If the Eagle tunnel were continued in the same direction that it has been run in the past, would it ever strike the Salt Lake No. 3?

A. No, I think not.

Q. Could the Eagle tunnel by any means ever hit the Salt Lake No. 3, if you ran it in a circle, even?

(Testimony of Joseph Jurey.)

A. I hardly think so.

Q. It would come out over the top of it, wouldn't it, higher up the hill than that? A. Yes, sir.

Q. Now, with reference to the Midas; is the Eagle tunnel higher than the Midas? A. It is, yes.

Q. It is a little bit higher, even more than the Salt Lake; the Midas is a little lower claim, isn't it?

A. Yes, sir.

Q. If the Eagle tunnel were continued in its present direction in the line of the development that has been done, could it ever in any shape or manner, touch the Midas?

A. No, it could not unless they sunk down.

Q. Unless they sunk down? A. Yes.

Q. Tunnels don't sink? A. No.

Q. No quicksand up there?

A. Not any that I know of.

Q. And if it were run in any direction, even if it were run in a circle, it could not hit the Midas, could it? A. No, sir. [435]

Q. It would come back to its same point, that is the nearest it could get? A. Yes.

Q. Now, with reference to the Evening Star, the same facts are true with reference to that tunnel?

A. Yes.

Q. That tunnel could not get on the Evening Star ground, could it? A. No, sir.

Q. Even if it ran straight ahead, or ran in a circle? A. No, sir.

Q. Now, in relation to this Farrin adit, that is on Salt Lake No. 4, is it not? A. Yes, sir.

(Testimony of Joseph Jurey.)

Q. What direction does that run?

A. Easterly.

Q. In what direction does the Farrin adit run?

A. Easterly direction.

Q. How near the surface does it run—is it a tunnel? A. Yes.

Q. It is really a tunnel; it was first a long adit, and then dipped underground, and then on into the hill? A. Yes, sir.

Q. What is the altitude of Salt Lake No. 4 with reference to No. 3? A. I could not say.

Q. What is the height of the Farrin adit with reference to Salt Lake No. 3, is it higher?

A. A little.

Q. A little higher? A. Yes.

Q. If the Farrin adit was continued in the same direction it has been run, to the upraise, or any upraise from it, which has been run on the ground, or which could be run on the ground, could it by any possibility ever hit the Salt Lake No. 3?

A. No, sir.

Q. And with reference to the Midas, is the Farrin adit higher than any point on the Midas?

A. Well, I don't know that.

Q. From your observation as a miner on the ground?

A. I don't think there would be much difference.

Q. You don't think there would be much difference? A. No.

Q. But if it were run in the same direction it is run, and the [438] upraises run in any direction

(Testimony of Joseph Jurey.)

you wanted to run them, by any possibility could the Farrin adit ever hit the Midas? A. No, sir.

Q. It could not? A. No, sir.

Q. And are the same facts true with reference to the Evening Star? A. Yes.

Q. It could never hit the Evening Star ground, could it? A. No, sir.

Mr. THATCHER.—That is all.

Redirect Examination.

Mr. SPRINGMEYER.—(Q.) Mr. Jurey, you might sink a shaft on the Eagle tunnel or adit, or Farrin adit, and then drift from the shaft into the Salt Lake No. 3, Evening Star, or Midas?

A. Yes, if you sunk deep enough, of course.

Q. As far as the Farrin adit is concerned, they would not have to sink very deep, because they are practically of the same altitude, are they not?

A. Very near the same.

Q. What was your father's name?

A. William Jurey.

Q. Was William T. Jurey, named in this location certificate, your full brother? A. Yes, sir.

Q. Did he live with you and your father?

A. Yes, sir.

Q. In Battle Mountain, until he was of age also?

A. Yes, sir.

Q. Will you please state what this is? (Hands paper to witness.)

A. That is my father's naturalization papers.

Q. Where has that been kept?

A. It has been kept by my mother.

(Testimony of Joseph Jurey.)

Q. How long have you known of its existence?

A. I have known it for thirty-five years.

Mr. SPRINGMEYER.—We offer that in evidence.

Mr. THATCHER.—No objection. [437]

The paper is admitted in evidence, marked Defendant's Exhibit No. 14, and reads as follows:

**Defendant's Exhibit No. 14—Certificate of Citizenship of William Jurey.**

"CERTIFICATE CITIZENSHIP

STATE OF NEVADA—COUNTY OF HUMBOLDT.

UNITED STATES OF AMERICA.

BE IT REMEMBERED, That on the Eighteenth day of October in the year of our Lord One Thousand Eight Hundred and Eighty-four, William Jurey formerly of Radruth in the Co. of Cornwall of England, at present of the State of Nevada aforesaid, appeared in the District Court of the Fourth Judicial District of the State of Nevada, in and for the said County of Humboldt, the said Court being a Court of Record, having common law jurisdiction, and a Clerk and a Seal, and applied to the said court to be admitted to become a Citizen of the United States of America, pursuant to the directions and requisitions of the Act of Congress of the United States of America, entitled "An Act to establish an uniform rule of Naturalization, and to repeal the acts heretofore passed on that subject," and of the several acts in relation thereto.

And the said William Jurey having thereupon produced to the Court such evidence, made such declarations and renunciations, and taken such oaths as are by the said acts required; thereupon it was ordered by the said District Court that the said William Jurey be admitted, and he was accordingly admitted by said Court to be A CITIZEN OF THE UNITED STATES OF AMERICA.

(Signature) WILLIAM JUREY.

Attest: A. T. GILSON,
Clerk.

By ——————————,
Deputy Clerk. [438]

State of Nevada,
County of Humboldt,—ss.

I, A. T. Gilson, Clerk of the District Court of the Fourth Judicial District of the State of Nevada, in and for the County of Humboldt, said Court being a Court of record, having common law jurisdiction, and a Clerk, and a Seal, do hereby certify that the above is a true copy of the original Certificate of Citizenship, to William Jurey on his application to become a citizen of the United States of America, remaining in my office, upon the records of said Court.

IN TESTIMONY WHEREOF, I affix my name, and the Seal of said Court is hereunto attached, this Eighteenth day of October, in the year of our Lord One Thousand Eight Hundred and Eighty-four, in the year of our Independence the 108.

[Seal] A. T. GILSON,
Clerk.

(Testimony of Joseph Jurey.)

[Endorsed]: Naturalization papers of William Jurey. Filed Oct. 18th, 1884. A. T. Gilson, Clerk. Recorded in Judgment Book C, page 286. A. T. Gilson, Clerk. Registered in Galena Township, Lander Co., Nev., October 20th, 1884. Robert McBeth, Registry Agent."

Mr. SPRINGMEYER.—(Q.) To explain your answer to General Thatcher's question, state what was the character of the shaft sunk on Salt Lake No. 3 in the summer of 1913? A. Shaft?

Q. Yes, as to whether it was mining work or other work. A. It was mining work.

Q. Under whose direction was that shaft sunk?

A. Under Mr. Ralph's.

Q. The defendant in this case? A. Yes, sir.

Q. Now, to clear up the matter of the location of the discovery on the Midas claim, will you please state again where the original discovery monument was placed?

A. The original discovery monument [439] was placed on the south end of the shaft, on the shaft where the location work was done.

Q. Then the discovery work and the discovery monument were placed together, practically together, were they not?

A. I don't understand you.

Q. The discovery monument and the discovery work were together? A. Yes, sir.

Q. In what part of the claim was this discovery?

A. It was close to the east side line.

Q. Then explain why there is a discrepancy be-

(Testimony of Joseph Jurey.)

tween your testimony and the certificate of location.

A. Well, it may have been I made a mistake in making out the notice at that time.

Q. Which is correct, the certificate of location statement, or the statement you made here, to the best of your belief? A. The work, I think, is.

Mr. THATCHER.—I move to strike the answer out as not responsive to the question.

The COURT.—That may go out.

Mr. THATCHER.—Read the question.

(The reporter reads the question.)

A. The statement I made here.

Mr. SPRINGMEYER.—(Q.) Now, please explain to the jury how it is that the present discovery monument is in the center of the claim?

A. Well, at the time that Mr. Liddell surveyed it, he put up the discovery, and he put it in the center of the claim.

Q. Has that anything to do with the original discovery? A. Anything to do with it?

Q. Yes; that is, you don't want the jury to understand that you claim the present discovery monument put up by Mr. Liddell, as your discovery monument? A. No, sir, I don't.

Q. What is the situation in that regard on the Evening Star claim? [440]

A. It was the same way.

Q. What did Mr. Liddell do with the discovery monument there?

A. He put it up in the center of the claim.

Q. And where was your discovery?

(Testimony of Joseph Jurey.)

A. On the work.

Q. And where was the work?

A. Well, along the south end of the claim—the white cut.

Q. The white cut, marked upon Plaintiffs' Exhibit "A" as number 24, is it not? A. Yes.

Q. And where was your discovery work done on that claim? A. On that white cut.

Q. I understand that your discovery monument and your discovery work were at the same point on the Evening Star. A. Yes, sir.

Q. State whether or not there is any hard rock around your point of discovery on the Midas claim?

A. Yes, sir, there is.

Q. You said, I believe, in answer to General Thatcher, that there was no hard rock at the point of discovery; did you mean your point of discovery or Mr. Liddell's discovery monument?

A. I meant Mr. Liddell's.

Q. On the Evening Star claim state whether there is any hard rock at your point of discovery?

A. Yes.

Q. You said in answer to General Thatcher, at the discovery monument on the Evening Star, there was no hard rock; what discovery monument did you mean? A. I meant Mr. Liddell's.

Q. Mr. Liddell's discovery? A. Yes—survey.

Q. You said on the Midas, at a point about six hundred feet north of what I understood you to mean as Liddell's discovery monument, there was a cut run on a stringer or vein; how long was that

(Testimony of Joseph Jurey.)

cut again; I didn't have it correctly.

A. About ten feet long.

Q. And how deep?

A. About seven or eight feet deep. [441]

Q. And how wide??  A. Four feet.

Q. When was that work done?

A. That work that I have reference to is on the Yellow Jacket claim, that cut six hundred feet in.

Q. On the Yellow Jacket.  A. Yes.

Q. You have it in your location certificate that the Midas claim parallels the Yellow Jacket; aren't you confused about them?

A. The Midas parallels the Yellow Jacket on the west, of course.

Q. I mean the work on the Midas claim that you testified to?

A. That is on that cut, that on the Midas claim—did you say six hundred feet north; was it north you asked me?

Q. Yes.

A. Well, that is the only cut that I have any reference to, north.

Q. When was that done?

A. That was done in 1907.

Q. 1907?  A. Yes, sir.

Q. You say the Yellow Jacket claim parallels the Midas claim on the west?  A. On the east.

Q. Well, it is on the east of one claim and on the west of the other?

A. Yes, sir, on the west of the other.

Q. Now, as to cut "24" on the Evening Star claim,

(Testimony of Joseph Jurey.)

when was that cut done?

A. That was done in 1907.

Mr. SPRINGMEYER.—That is all.

Mr. THATCHER.—I want to ask some other questions, if the Court please, but I have mislaid an exhibit, and I will proceed with that after lunch, if it cannot be found now; I would like permission to recall the witness a little later.

Mr. SPRINGMEYER.—That will be all right.

Mr. THATCHER.—I want to ask Mr. Jurey a question or two right now, though. [442]

Recross-examination.

Mr. THATCHER.—(Q.) Mr. Jurey, you said that you worked on that road up to the mill?

A. Yes, sir.

Q. Did you work there yourself?

A. I didn't do any myself, but the men that was working on it I was looking after.

Q. And you were looking after the men?

A. Yes.

Q. You never did any work there?

A. I looked after that a little while, not long; I didn't do any work myself.

Q. Did you tell us yesterday you found a little vein up there on the road? A. Yes, sir.

Q. In which direction did it run?

A. Northerly and southerly.

Q. Across the road? A. No, along the road.

Q. Along the road? A. Yes.

Q. Parallel with the road?

A. On the east side of the road.

(Testimony of Joseph Jurey.)

Q. East side of the road, you would call this the east side (indicating)?  A. Yes, sir.

Q. This would be the road and this would be the east side of the road?  A. Yes.

Q. Did it run right along the road?

A. No, the road runs a little west, I think.

Q. Well, would the vein cross the road?

A. No, it would not cross the road.

Q. It would not?  A. No.

Q. You never assayed that, did you?

A. No, sir.

Q. Nor panned it?

A. No, sir, I never sunk that shaft, Mr. Thatcher.

Q. I am not talking about the shaft; I am talking about the road. The shaft wasn't there in 1913, was it?  A. I think not.

Q. You never assayed that, Mr. Jurey?

A. No, sir.

Q. Nor panned it?  A. Never panned it.

Q. And your idea of its mineral character is merely your judgment [443] of it?

A. The looks of the rock.

Q. How wide was it?

A. Well, I should judge it was about eighteen inches.

Q. About eighteen inches. How far was it from the mill down on the road, do you recollect?

A. Well, I should say it was about a hundred and fifty feet.

Q. A hundred and fifty feet down on the road?

A. Yes, sir, from the mill.

(Testimony of Francis D. Brown.)

Mr. THATCHER.—That is all

Mr. SPRINGMEYER.—(Q.) About how long was the vein, so far as it was open?

A. It was six or seven feet exposed.

Mr. SPRINGMEYER.—That is all.

**Testimony of Francis D. Brown, for Defendant.**

Mr. FRANCIS D. BROWN, called as a witness on behalf of defendant, after being sworn, testified as follows:

Direct Examination by Mr. SPRINGMEYER.

Q. Mr. Brown, what is your occupation?

A. I am an accountant and stenographer.

Q. Do you know the defendant? A. Yes, sir.

Q. Have you ever been in his employ?

A. Yes, sir.

Q. During what time?

A. From the first of September, 1913, to the second of July, 1914.

Q. In what capacity were you employed?

A. As an accountant and secretary.

Q. Were you ever in Copper Canyon?

A. Yes, sir.

Q. During what time?

A. From about the 12th or 14th of January to July 2d.

Q. What were your duties in Copper Canyon?

Mr. THATCHER.—(Q.) What year was that?

[444]

A. From about the 12th or 14th of January until July 2d, all in 1914.

(Testimony of Francis D. Brown.)

Mr. SPRINGMEYER.—(Q.) What were your duties in Copper Canyon, Mr. Brown?

A. Oh, sort of care-taker; I kept the books out there just the same as I did in Salt Lake.

Q. Did you ever make any examination at any points on Salt Lake No. 3 claim?

A. Yes, sir, have been all over that numerous times.

Q. When were you first over the claim?

A. Well, the first time I was on the ground was January 14th, with Henry Lemaire.

Q. January 14th, 1914? A. Yes, sir.

Q. What points did you examine at that time?

A. We merely walked over the southern and eastern end of the property, and the corner monuments.

Q. When next were you on the property?

A. I came back and started to live there on the 16th of January.

Q. Did you ever examine point number two on Plaintiffs' Exhibit "A"?

A. Yes, sir, several times.

Q. When did you make an examination of that?

A. Well, numerous times.

Q. When was the first occasion?

A. I don't know the exact date.

Q. About what was the date?

A. Along in January?

Q. 1914? A. Yes, sir.

Q. How often after that did you examine?

A. Well, I lived just across in a cabin, and went past that and looked at it numerous times after that while I was there.

(Testimony of Francis D. Brown.)

Q. How carefully did you examine it?

A. Well, I looked very carefully; I moved all the rocks around there, looking for a location notice; we had never found it.

Q. What was the condition of the point at that time? Of that point 24—what was the condition at point 24? [445]

Mr. THATCHER.—Objected to on the ground it is incompetent, irrelevant and immaterial; and furthermore, that it appears from the testimony of this witness that he never was in Copper Canyon until January, 1914, and therefore he is not competent to testify as to what the conditions were, and whether or not point number 2 was in the same condition as it was when this trial was commenced, or the title or rights of the plaintiffs in these cases initiated.

Mr. SPRINGMEYER.—I understand it has been proved by other witnesses, that the surface was in the same condition at that time.

Mr. THATCHER.—There is no such proof here.

Mr. SPRINGMEYER.—I was under the impression that had been proven. Of course if that is not in, the question is clearly improper.

Q. Do you know Guy Davis? A. Yes.

Q. Did you ever have any conversation with him regarding the matter—

Mr. THATCHER.—(Intg.) Never mind regarding what; ask him the conversation.

Mr. SPRINGMEYER.—(Q.) Regarding the location of the Guy Davis Placer?

Mr. THATCHER.—Object to it on the ground it

(Testimony of Francis D. Brown.)

is incompetent, irrelevant and immaterial.

Mr. SPRINGMEYER.—I don't think it would do any harm for him to answer yes or no; perhaps we can lay the foundation for a proper question.

Mr. THATCHER.—Yes; I won't object to that.

The COURT.—You may answer the question.

A. I did.

Mr. SPRINGMEYER.—(Q.) When?

A. Well, on numerous occasions [446] during the time I was there.

Q. Well, on any particular occasion?

A. Any particular date?

Q. Yes.

A. Why, I have had so many talks with him I don't know just which one.

Q. Well, did you ever have any conversation with him regarding the circumstances under which he located this placer? A. Yes, sir.

Q. What occasion was that?

Mr. THATCHER.—Don't say what the conversation was, just say when?

A. It was about the 20th or 25th of January, 1914.

Q. What was that conversation?

Mr. THATCHER.—Objected to on the ground it is incompetent, irrelevant and immaterial, long after the rights and title of the plaintiffs in this case were initiated, and has no bearing in any way upon the case, and no proper foundation has been laid for it if it be for the purpose of impeachment.

Mr. SPRINGMEYER.—I will submit it without argument.

(Testimony of Francis D. Brown.)

The COURT.—I will sustain the objection then.

Mr. SPRINGMEYER.—That is all, Mr. Brown.

Cross-examination.

Mr. THATCHER.—(Q.) Mr. Brown, you said you were the assistant and stenographer to Mr. Ralph? A. No, sir.

Q. Did you not?

A. No, sir, I didn't say assistant

Q. What did you say? A. Accountant.

Q. Accountant and stenographer to Mr. Ralph?

A. Yes, sir.

Q. Did you say you were his secretary?

A. Yes, sir.

Q. That was before you came to Copper Canyon?

A. Yes, sir.

Q. You came to Copper Canyon as the representative of Mr. Ralph? [447] A. Yes, sir.

Q. You said that your duties were to keep the books and act as caretaker? A. Yes, sir.

Q. You were there as a representative of Mr. Ralph, I understand? A. Yes, sir.

Q. And looking after his interests upon the ground? A. Yes, sir.

Q. Following his instructions as you received them? A. Yes, sir.

Q. You were his attorney in fact, were you not?

A. No, sir.

Q. Weren't you his attorney in fact in the application for patent in this case for Mr. Ralph?

A. No, sir, I was his employee.

Q. Weren't you his attorney in fact, and didn't

(Testimony of Francis D. Brown.)

you sign the application papers for patent in this particular proceeding?

A. I think I did, yes, sir.

Q. And you acted as attorney in fact for Mr. Ralph in applying for patent? A. Yes, sir.

Q. Were you in his employ, and there as his representative, on the 20th day of March, 1914?

A. Yes, sir.

Q. I hand you a paper, and ask you if you have ever seen that before? (Hands to witness.)

A. Yes, sir.

Q. Did you make that out? A. Yes, sir.

Q. At the request of Mr. Ralph? A. No, sir.

Q. Without any direct authority from Mr Ralph?

Mr. SPRINGMEYER.—Will you please let me see what the paper is, General? (The paper is handed to counsel.)

Mr. THATCHER.—(Q.) You posted this on the ground, did you? A. Yes, sir.

Q. Did you post that one in the monument—that one or a copy of it? A. Yes. [448]

Q. That is in your handwriting, is it?

A. It is my signature; I wrote it on the typewriter.

Q. Did you write it on the typewriter; and this "F. D. Brown," did you write that?

A. Yes. Mr. Eckhart signed his name, and Mr. Joseph Irving signed his name.

Q. Are you sure that Mr. Irving signed his name?

A. Yes, sir.

Q. You posted this in a monument?

A. Yes, sir.

(Testimony of Francis D. Brown.)

Q. Did you ever monument the ground?

A. May I look at that, please?

Q. Yes, sir. (Hands paper to witness.)

A. Yes, sir, this claim was monumented.

Q. Monumented on the ground, was it?

A. Yes.

Q. Where did you get this location notice?

A. The description?

Q. No, the notice itself.

A. I don't remember whether it was one I had in my own trunk, or whether it was one that was sent to me from Salt Lake.

Q. Don't remember whether it was one sent to you from Salt Lake?

A. No; I usually have some in my trunk.

Q. Was one sent to you from Salt Lake?

A. I ordered some from the Pembroke Stationery Company.

Q. Didn't you order any from anywhere else?

A. I may have received some; someone may have sent me some.

Q. Somebody—who sent you any?

A. Mr. Ralph.

Q. Didn't he give you any instructions to prepare this and put it on the ground?

A. No, sir; Mr. Gillette gave me those instructions.

Q. Who is Mr. Gillette? A. An attorney.

Q. Attorney for Mr. Ralph and the Glasgow-Western Company? A. Yes.

Q. And he told you to post this on the ground, did he? [449]

(Testimony of Francis D. Brown.)

A. He didn't give me the detailed instructions; those I made from the map myself, and made the locations in accordance with the description I had written.

Q. But he told you to locate these claims as placer claims? A. Yes, sir.

Mr. THATCHER.—We offer it in evidence, if the Court please.

Mr. SPRINGMEYER.—Object to it on the ground it is immaterial and not proper cross-examination. We don't want to encumber this record by such notices.

Mr. THATCHER.—(Q.) This covers part of the ground in controversy here, does it not?

A. Yes, sir.

Q. It takes in a half of the Salt Lake No. 3 running down the middle line of the claim through the location monument?

Mr. SPRINGMEYER.—Wait just a moment. I object on the ground it is not proper cross-examination. I wanted to allow you to go thoroughly into what his duties were, but now you are getting out of the line of his duties, and I object.

Mr. FORMAN.—He has testified he was caretaker there, a representative of Mr. Ralph, and in charge of the property.

The COURT.—This is a matter I don't suppose was in contemplation of counsel or the witness either, at the time he was examined in chief; I understand it now, but there was nothing in his testimony in chief which suggested it. I do not think it is proper

(Testimony of Francis D. Brown.)

cross-examination. I am not passing on any other feature of the matter.

Mr. THATCHER.—I have already identified this without objection, will it all go out?

Mr. SPRINGMEYER—I move to strike it out on the ground it is not proper cross-examination. You simply asked these questions and I didn't object because I thought you were inquiring about his duties, but I think it is going a little too far to [450] attempt to get a document in evidence on a round-about pretext of that sort.

The COURT.—I will grant the motion, not to strike out all the testimony, but all that has a bearing on this declaration.

Mr. THATCHER.—The Court will permit the testimony up to the identification of it.

The COURT.—All the testimony introduced for the purpose of proving this declaration on the part of Mr. Ralph, will go out. I suppose if the identification of the documents goes out that is all you wish?

Mr. SPRINGMEYER.—That is all that is necessary.

Mr. THATCHER.—I would like to have them marked for identification; I didn't get but one of them up to the witness.

The COURT.—You are identifying them as a matter of your own good faith, because the identification, so far as the witness is concerned, is not in the record; it has been stricken out.

Mr. THATCHER.—I think your Honor's ruling

(Testimony of Francis D. Brown.)

is correct, and the matter can be taken up later.

Q. You will remain on attendance at this trial, Mr. Brown. A. Yes.

Q. Are you under subpoena? A. Yes, sir.

Mr. THATCHER.—That is all [451]

**Testimony of Parker Liddell, for Defendant (Recalled).**

Mr. PARKER LIDDELL, called for further examination by defendant, testified as follows:

Mr. SPRINGMEYER.—(Q.) Mr. Liddell, I believe you stated that you surveyed each of these three claims? A. I did.

Q. When did you first survey them?

A. It was in the summer of 1913.

Q. That was the occasion when you surveyed all three claims, was it? A. Yes, sir.

Q. Did you ever survey any of the other claims before that?

A. If you mean all the others, those belonging to this group of claims, I did not.

Q. Did you do anything in the nature of survey work in 1907 or 1908 or 1909? A. No, sir.

Q. With reference to the Midas or Evening Star?

A. No, sir.

Q. When did you make the survey?

A. You refer to—

Mr. THATCHER.—I understood Mr. Liddell to say that he didn't do any surveying on these three claims in 1907, 1908 or 1909.

WITNESS.—I don't recall doing any during those three years.

(Testimony of Parker Liddell.)

Mr. SPRINGMEYER.—I think we can clear that up, Mr. Thatcher.

Q. Wasn't that your brother, if you know?

A. My brother made a survey of, I think, both the Midas and Evening Star, together with other claims, during, if I remember correctly, 1909, but I would not be positive about that, I think it was during 1909.

Q. When did you begin making that survey?

A. It was the early part of the summer of 1913.

Q. Do you remember the month?

A. Well, with reference to these three claims, I would feel quite certain it was in June of 1913.

Q. In connection with the work of surveying these claims, did [452] you survey any other claims?

A. I surveyed the group of claims; there were some sixteen claims in the group.

Q. Which of those three claims did you first survey?

A. Well, I started on the Midas first, I believe.

Q. What did you do?

A. If I remember correctly, I started at the southeast corner of the Midas, running the line up the east side line.

Q. Where did you get your information as to what was the southeast corner of the Midas.

A. I found a post on the ground marked "Southeast Corner of the Midas Lode."

Q. Did you have any other information?

A. I had the records of the location certificates, and the position of the claim was indicated by Mr. Jurey, I believe.

(Testimony of Parker Liddell.)

Q. Beginning with the southeast corner of the Midas, what did you do?

A. I determined the meridian, and ran the line up the east side line of the Midas claim.

Q. Did you find any side center monument?

A. Yes, there was an east side line monument.

Q. Did you find any end monument on the east side line, on the northeast corner?

A. Yes, there was a northeast corner.

Q. After running that line, what did you do?

A. Well, at that time I continued the line on up the east side line of the Salt Lake No. 3.

Q. And then what did you do?

A. The east side line of the Salt Lake No. 3 and the west side line of the Salt Lake No. 4 are identical—for a ways they are thoroughly and entirely identical—and I ran it through as far as the northwest corner of what was the Salt Lake No 4.

Q. Please state generally just what you did then and thereafter, with reference to surveying these three claims?

A. I ran out the boundaries of the claims, tied in the work, and such improvements as I found upon the ground. [453]

Q. In what condition did you find the monuments?

A. I found practically all the monuments of these three claims.

Q. Do you mean by that the boundary monuments?

A. Yes, the boundary monuments—I found all the monuments, both the boundary monuments and the

(Testimony of Parker Liddell.)

location discovery points, with the exception of the location discovery point of the Salt Lake No. 3, and with a possible exception of the west side line center —not west side line—corner, of the Salt Lake No. 3.

Q. Please state whether the discovery points marked on your plat are the discoveries that you found upon the claims.

A. Well, they are so far as I found them; the discovery points of the Midas and the Evening Star are marked on the plat at the points in which I found them. As I stated before, I found no discovery point of the Salt Lake No. 3.

Q. Please state what you mean on this plat by the word "Disc," in the center of the claim on the Midas, as distinguished from "Discovery shaft" on the eastern side of the claim.

A. Well, the first mentioned refers to the discovery point, and the second mentioned refers to the discovery work.

Q. Did you select the discovery yourself, take the point for granted, or did you find an actual notice of discovery there?

A. I found an actual monument in which the post was marked with the words, or the abbreviation standing for location discovery Midas lode.

Q. You found that at the discovery shaft, did you not? A. No.

Q. You did not? A. I did not.

Q. You didn't erect that discovery monument in the center of the Midas lode? A. I did not, no.

Q. Do you know who put that discovery monu-

(Testimony of Parker Liddell.)

ment in the center of the Midas claim?

Mr. THATCHER.—Now don't testify unless you know of your own [454] knowledge.

A. I don't know of my own knowledge, no.

Mr. SPRINGMEYER.—(Q.) With reference to the Evening Star claim, state what was the condition of the discovery monument and the discovery shaft on that claim.

A. The discovery monument was located on the ground as a rock monument, with a four by four pine post, on which was written or marked with a pencil, I suppose, "Location Discovery Evening Star Lode."

Q. In what part of the claim did you find that?

A. Well, practically in the center of the claim.

Q. And where was the discovery shaft that you found, was it marked?

A. Well, I don't know of my own knowledge what the discovery shaft or work was.

Q. Did you find anything marked "Discovery shaft" or which you marked "Discovery shaft" on your plat?

A. I found on the claim two cuts and a shaft; there were no markings around the shaft that I know what they were.

The COURT.—(Q.) Two cuts and a shaft?

A. On the Evening Star, yes, sir.

Mr. SPRINGMEYER.—(Q.) Do you mean two cuts and a shaft on the Evening Star?

A. I mean three pieces of work; there was a cut on the south end of the claim; there was a cut about

(Testimony of Parker Liddell.)

eighty feet easterly from the location discovery point or post; and there was a shaft near the west side line post.

Q. Now, what work did you find on the Midas at the time you made the survey?

A. At the time I made the survey there was a shaft about 145 feet easterly from the location discovery point or post.

Q. How deep was that shaft?

A. Well, it was about eight or ten feet deep; I could not state at that time just how deep it was.

[455]

Q. Did you find any other work?

A. There was a tunnel that was down in the gulch, southerly from this location discovery monument post, approximately three hundred feet, I believe.

Q. Any others?

A. There was a shaft in the extreme northwest corner of the Midas claim that was sunk in the wash; it was about fifteen feet deep.

Q. Were there any other workings?

A. I didn't find any other workings on the claim.

Q. Do you know whether there was a tunnel on the Midas at that time? A. I spoke of the tunnel.

Q. Oh, pardon me, I misunderstood that. As to the Salt Lake No. 3 claim, what did you do with reference to a discovery, fixing a discovery on your plat?

A. I took the point of discovery on the plat from the copy of the original location notice; I could not find any point of discovery on the ground that I could identify as such.

(Testimony of Parker Liddell.)

Q. So you arbitrarily fixed a point?

A. On the plat, yes, taking it from the data given in the copy of the location notice.

Q. Now please describe generally what was the condition of each of the monuments on each of the three claims, not mentioning the discovery monuments?

A. Well, I found all the boundary monuments of the several claims, and I think without exception they were rock monuments with either four by four posts about four feet long, or two by fours nailed together, which represented a four by four.

Q. Were they all in place? A. Yes.

Q. Did you find any descriptions in any of the monuments?

A. The corner monuments and the side center monuments on the Midas and Evening Star were marked, that is, the posts were [456] written on with either a pencil or crayon. The northern corners of the Midas and Evening Star, and I believe the northern corners, or all the corners of the Salt Lake No. 3, were rock monuments with posts in them, and the posts were very badly weathered, so any writing on them was not discernible, except the northwest corner of Salt Lake No. 3; in that corner I could distinguish, or thought I could distinguish the word "Salt," or at least a portion of it, "sal"; but further than that I could not be certain of any markings on any of the corners of Salt Lake No. 3.

(The Court admonishes the jury, and at 12 o'clock a recess is taken until 1:30 P. M.)

AFTER RECESS—1:30 P. M.

(All parties present.)

Mr. SPRINGMEYER.—I would like to recall Mr. Jurey for a moment.

Mr. THATCHER.—No objection.

**Testimony of Joseph Jurey, for Defendant (Recalled).**

Mr. JOSEPH JUREY, called for further examination by defendant, testified as follows:

Mr. SPRINGMEYER.—(Q.) Mr. Jurey, I am not clear in my mind as to who you said surveyed the Midas and Evening Star claims for Mr. Farrin in 1908 or 1909; who was it?

A. Charles Liddell.

Q. Charles Liddell? A. Yes, sir.

Q. That is a brother of Mr. Parker Liddell?

A. Yes, sir.

Mr. SPRINGMEYER.—That is all.

Mr. THATCHER.—It wasn't this Mr. Liddell who surveyed the ground at that time?

A. No, sir.

Q. His brother?

A. His brother, Charlie Liddell.

Q. And he came out there and made surveys?

A. Yes, sir.

Mr. THATCHER.—That is all. [457]

**Testimony of Parker Liddell, for Defendant (Recalled).**

Direct Examination of Mr. PARKER LIDDELL, Resumed.

Mr. SPRINGMEYER.—(Q.) Please describe

(Testimony of Parker Liddell.)

what you found on the Salt Lake No. 3 claim that led you to place the location discovery on your plat in the place you did.

A. I made an effort to find the actual location discovery point of the Salt Lake No. 3; I found from a copy of the notice of location that the claim was supposed to run northerly about 255 feet, if I remember correctly, and southerly about 1245 feet; and I went into the vicinity of where that point would be on the ground, but could find no monument, and in looking around I found up to the side hill, easterly, I should judge at that time it was 150 feet probably, an old post which was very much weather worn, and which stood in a few rocks at the bottom, and leaned up against a ledge of rocks; and at this point there seemed to have been dug a trench, about from a foot and a half to two feet wide in places, and of course it was impossible to tell how deep it had been; apparently in the course of years, the dirt had filled in the bottom of it, and I think, if my recollection serves me right, it was in the neighborhood of ten or twelve feet in length; but I examined the monument, and I didn't find any notice, and I could not descry any figures, letters or markings on the post; the post had weathered and was dark, and I could not determine or identify it as any particular spot.

Q. Now just how much of an examination did you make to find a notice?

A. Well, I walked all around that section of the country.

(Testimony of Parker Liddell.)

Q. I mean of that particular spot.

A. Of that particular monument, I looked thoroughly at the post, and I looked in the crevices of the rock that were exposed; I didn't take down what monument there was, there was only a few [458] rocks at the bottom of it, as I remember it; they might have been a foot or two, some of them, two or three of them; it seems to me there were about three of the larger size rocks.

Q. And where was the post?

A. The post was standing, as I remember, right in the center of those, and running up against a sort of a cropping that is a fairly prominent cropping at that point.

Q. What point is that on plaintiffs' map "A" according to the numbers, will you identify that? Was that at the place you marked on your survey "Discovery," or was it not?

A. Discovery monument, you mean?

Q. Yes.

A. No, it wasn't at the point I marked on my plat as "Discovery monument"; it was in the vicinity of the cut shown here marked "2"; it was approximately in that vicinity.

Q. Did you find anything at the point that you marked as "Discovery Monument Salt Lake 3 Lode"? A. I did not, no, sir.

Q. Did you do anything with reference to locating that point on the map?

A. I located the point on the map, yes.

Q. Did you locate it on the ground?

(Testimony of Parker Liddell.)

A. Not exactly, that is, I didn't drive a peg at that point.

Q. You didn't drive any peg or anything?

A. No.

Q. Did you make any other examination at any other time of the rocks which you say might have been a monument at point 2 on Salt Lake No. 3 claim?

A. Well, I was back there, I believe, but I don't think that I went into any examination of the particular spot near the rocks.

Q. Did you ever thereafter make any attempt to find the discovery notice or location notice?

A. If I recall correctly, I think I asked Mr. Jurey if it was possible that that discovery monument was on the south end of the claim; I thought it might be possible that the notice had [459] transposed the distances; that is, that the notice as it called for 255 feet northerly, might have been intended to call for 255 feet southerly, and I asked him if it was possible that that was at the southerly end of the claim instead of the northerly end.

Q. Did you make any other search beyond what you have testified to?

A. No, not that I remember of.

Q. Now, in surveying, Mr. Liddell, when you find monuments that apparently have no relation to the claim, or may not have any relation to the claim, what is your practice as to locating the monuments that belong to the claim in question?

A. Well, as far as the monuments I may find on

(Testimony of Parker Liddell.)

the ground, if I cannot identify them I pay no attention to them, but in case there is a monument of any claim missing, or appears to be missing, I naturally replace it.

Q. Well, it is frequently the case that there are monuments that you can't understand on the claims, is it not? A. Certainly.

Q. What examination did you make of the workings of these three claims, and when?

A. Well, I testified to the workings I found on the Midas and Evening Star at the time of the survey, I believe; on the Salt Lake No. 3 at the time of the survey there were two small shafts in the northwesterly portion of the claim—

Mr. THATCHER.—In the what?

A. In the northerly and westerly portion of the claim, which were covered by outhouses at the time. There was the road that had been cut along the hillside in the northeasterly portion of the claim, and the road I refer to is the one which ran up through the mill, the mill being located on the division line between Salt Lake No. 3 and Salt Lake No. 4 claims; and there was a small [460] shaft in the wash in the southwesterly part of the claim. In addition to that there was an old well there, but I didn't know that that well was there until some little time after I had actually been there for the purpose of making the survey; the old well was covered over by timbers, and was right in the roadway near the stable, between the stable, I believe, and the water trough.

(Testimony of Parker Liddell.)

Q. When next did you examine the workings on these claims?

A. Well, I was to a portion of them, that is, I was to the mill-cut and to the mill road, and to the point I believe at which I described this old post, in September, I believe it was about the 25th of the month, 1913. In addition to that I was on the ground on May 8th, 1915.

Q. Do you know what the condition of the ground was prior to the month of September, 1913?

A. Of the three claims?

Q. Yes.

A. Well, yes, I know what the condition was prior to the month of September, 1913.

Q. You said previously in you examination, I believe, that during several months that summer you were in and about this neighborhood, making the patent surveys for all the claims of the group?

A. I did, yes.

Q. Did you examine the mineral characteristics?

A. Not at the time I made the survey, no.

Q. Did you at any time examine the mineral characteristics? A. I did.

Q. Did you make any examination to discover whether there was rock in place?

A. Yes, I went over the claims on May the 8th, this present month.

Q. Will you please describe generally on what places on each of the three claims there is rock in place, or solid rock?

A. Well, in general, all three of the claims cover

(Testimony of Parker Liddell.)

the smaller hills adjoining the immediate Copper Canyon in the vicinity; and [401] the actual formation and rock in place can be seen at many places on any one of the three claims; at the northwest corner of Salt Lake No. 3 there is a very bold cropping, in which the rocks are ragged and jagged, and very plainly visible; on the northeasterly portion of Salt Lake No. 3, there are a number of croppings, and the general hillside is typical of the formation and rock in place. On the easterly side of Salt Lake No. 3, approximately in the center of the claim, there is a ridge that runs down into the Copper Canyon gulch, where the cropping can be seen. On the Midas and on the Evening Star there are several ridges that run down into the Copper Canyon proper, and on each one of these ridges the actual formation and rock in place can be seen.

Q. Is that all?

A. Well, at the time I was on the ground, the 8th of this month, the cut just west of the mill building, had been run, and exposed the actual formation; it also exposed a vein.

The COURT.—That is on Salt Lake No. 3?

A. That is on Salt Lake No. 3.

Q. (Mr. SPRINGMEYER.)—How long is that road, Mr. Liddell? A. Which road?

Q. On the Salt Lake No. 3; is that the road, on Salt Lake No. 3, that you speak of?

A. The point I am speaking of is an open cut that is westerly from the mill, and that is down quite a few feet below the mill road, and this cut is in the

(Testimony of Parker Liddell.)

same position at which I spoke of having found a trench at my previous visit.

Q. It was in the same condition?

A. Same position. In addition to this cut exposing a vein there are the cuts that were made and the excavations made for the mill; in the lower mill excavation the rock was in place entirely, and in the face of the cut there was a vein exposed. [462]

Q. Did you make any examination anywhere around the vicinity of what is known as the Emanuel Pierce cabin, if you know where that is?

A. Well, I could not identify the Emanuel Pierce cabin; that is, I don't know Mr. Pierce, or didn't know the cabin by popular name.

Q. On Defendant's Exhibit No. 3, marked with a circle in red is the Emanuel Pierce cabin; does that help you identify the place?

A. You want the relation of the workings?

Q. I want to know whether anywhere in the vicinity of that cabin, in the immediate vicinity of that cabin, or within a few hundred feet, there is solid rock or rock in place?

A. Yes, there is rock in place just back of the cabin, almost directly in a northeasterly direction from the cabin. The cabin I refer to is the one with the red circle around it.

Q. About how far, if that fixes it in your mind?

A. Well, I judge it could not be over twenty feet, it might be closer.

Q. And in what direction from the cabin?

A. Northeasterly direction.

(Testimony of Parker Liddell.)

Q. Now describe the veins that you have testified to on Salt Lake No. 3 claim, as you saw them.

A. In the open cut first referred to, which is a little northwest of the mill—

The COURT.—(Q.) What number is that?

A. I believe it is number 2 on exhibit "A." (Contg.) There is a four-foot—

Mr. THATCHER.—(Intg.) May I ask a question or two before you finish that question?

Mr. SPRINGMEYER.—Yes.

Mr. THATCHER.—(Q.) When did you see this vein you are going to talk about now?

A. May 8th of this year. [463]

Q. You didn't see it any time prior to September 6th, 1914, did you?

A. Not to recognize it as a vein at that time.

Mr. THATCHER.—Objected to on the ground it is incompetent, irrelevant and immaterial, and not within the issues of the case, and being a discovery or a vein which he saw and found after and subsequent to the initiation of the title of the Guy Davis placer.

Mr. SPRINGMEYER.—The witnesses on behalf of the plaintiffs have testified to the condition in this particular working. Didn't they testify as to what they found there?

Mr. THATCHER.—No, sir.

Mr. SPRINGMEYER.—Didn't Mr. Boyle?

Mr. THATCHER.—Mr. Boyle has never seen cut No. 2.

Mr. SPRINGMEYER.—Even so, may it please

(Testimony of Parker Liddell.)

your Honor, we submit it is proper evidence.

The COURT.—Of what?

Mr. SPRINGMEYER.—To show the mineral character of the formation there, and to show a vein, because if a vein exists at a later date, it is certainly evident that it existed at a prior date, and we can connect up later on whether or not there was a discovery; in fact, we have already shown the conditions. Counsel mistakes another point; if the vein was discovered at any time before the location of the placer, it does away with the necessity of an original discovery.

Mr. THATCHER.—That may be true, but he testified that the first time he ever saw a vein to recognize it as such was on May 8th, of the present year.

WITNESS.—Beg pardon, General, I refer to this particular vein.

Mr. THATCHER.—Yes, this particular vein. The first time you ever saw a vein in that cut to recognize it as such was in May of this year; that is correct, is it not, Mr. Liddell?

A. Well, not a vein in that cut. [464]

Q. I am talking about that cut.

A. Oh, it happens in that cut; there is this particular vein which I was about to mention, and you objected; there is also a slip which is represented by the wall rock along which the cut is driven, and which the rock itself plainly shows is a fracture, and along which the original trench to which I just previously referred to was dug.

(Testimony of Parker Liddell.)

Mr. THATCHER.—Well, he asked you with reference to that cut.

The COURT.—I do not think you should be permitted to introduce testimony as to conditions that were not visible at and before the time the placer locations were made; and unless you can show you knew of the existence of this vein before that time, it does not seem to me you made any discovery.

Mr. SPRINGMEYER.—It is not for the purpose of showing the discovery, only for the purpose of showing the character of the mineral there. We have shown by other witnesses that that particular portion was discovered and observed by them prior to the location of the placers in 1912; by this witness we are only seeking to show the character of the formation there.

(Discussion.)

Mr. THATCHER.—I submit to the Court both the Jorys said they didn't know where that point was on the ground, both on direct examination by Mr. Springmeyer, and on cross-examination by me.

Mr. SPRINGMEYER.—I believe you are right about that. I will withdraw the question.

Q. Was there any part of the workings there which were visible prior to September, 1913?

Mr. THATCHER.—Now, if you know?

Mr. SPRINGMEYER.—If you know, and which you saw yourself.

A. You are speaking of this cut that is in that vicinity, or at [465] that particular point?

Q. Yes.

(Testimony of Parker Liddell.)

A. As I stated before, at the time I was there looking for the discovery monument of the Salt Lake No. 3, I found what appeared to be an old trench, ten or twelve feet in length, as I remember it, and maybe a foot and a half to two feet in width, but I could not state the depth of it, because of its having been apparently filled in with the soil, and it was at the southeasterly end of this trench at which there was quite a bold cropping of rock, where I found the old post, and which I could not identify as the discovery monument of the Salt Lake No. 3.

Q. Was there any part of the vein exposed or visible, that you saw at that time?

A. Well, I cannot recall of having identified at that time the vein to which I was about to refer, but at that time the cropping was such as to indicate a decided fracture in the formation at that point.

Q. You observed the formation at that particular point, so far as the workings were opened up at that time, did you? A. Certainly.

Q. Did you ever take any samples from the part of the workings that was exposed on the occasion of your visit prior to September, 1913?

A. Well, I believe that recent samples I took in this month would be at a point which would correspond to the bottom of the northerly end of that trench, provided that trench had been dug to a depth of a foot and a half.

Q. Well, Mr. Liddell, how deep had the trench been dug at the time you saw it prior to September, 1913? A. I could not say positively.

(Testimony of Parker Liddell.)

Q. What is your best recollection?

A. Well, the best of my recollection is that the depression along the trench at any point was approximately from a foot to [466] a foot and a half; now it may have been that there was a deeper depression than that, or the trench itself might have been dug considerably deeper, but the dirt was filled in, and there was some grass grown on the dirt, and I could not say; the trench might have been deeper, or the position as I saw it, might possibly have represented the total depth.

Q. Did you take any samples from the part of the trench which was exposed upon the occasion of your first visit?

A. Well, I could not say that I absolutely did take samples of the portion of it exposed at the time of my first visit to this particular point.

Q. Did you have assays made of the samples that you took from above the foot and a half depth?

A. I would not say that I took samples above the foot and a half; I took them about a foot and a half from the surface.

Q. Did you have assays made of the samples that you took at a point about a foot and a half?

A. I made assays of the samples that I took at that place, yes.

Q. Have you those assays?

A. I think we have a list of them.

Q. How many did you take at that point?

A. Two.

Q. Do you know what the samples showed?

(Testimony of Parker Liddell.)

Mr. THATCHER.—I object, if the Court please, as incompetent, irrelevant and immaterial, the same objection I made before; furthermore, it must, of necessity, unless he made them himself, be hearsay.

Mr. SPRINGMEYER.—(Q.) You made the assays yourself? A. I did.

Q. You took the samples and made the assays yourself? A. I did.

Mr. SPRINGMEYER.—I believe, may it please your Honor, that [467] the Jory brothers testified to the depth of the trench, and that it was over a foot and a half deep prior to the month of September, 1913.

The COURT.—The witness says that he could not state that the samples were taken from a point that was exposed at the time.

Mr. SPRINGMEYER.—No, but his testimony, taken in connection with the other evidence, I think is sufficient to allow the evidence to go in.

(Discussion.)

The COURT.—I should judge from the way you argue now, the effect of this testimony is that they discovered this particular place at that time, and the value of it.

Mr. SPRINGMEYER.—No.

The COURT.—Then what is the purpose?

Mr. SPRINGMEYER.—I am merely going to show that was found and known to the owners of the claims prior to September, 1913; perhaps by later evidence I can connect up and show that the owner of the claim knew of this particular point.

(Testimony of Parker Liddell.)

The COURT.—If you have testimony to that effect the testimony must come in.

Mr. SPRINGMEYER.—Well, we will withdraw those questions then, until they are identified or connected up. I was under the impression it was shown by the Jorys that they knew of that particular spot, and that a certain amount of work had been done there; that is my recollection of the evidence, and I think it is the fact.

The COURT.—Well, you can take that matter up again later, if you can show that fact.

Mr. SPRINGMEYER.—(Q.) Did you make any other examinations of veins or fractures on the Salt Lake No. 3, which were known to you prior to September, 1913? [468]

A. Prior to September, 1913, I knew that the mill cut had been dug, and there had been an excavation made; and I believe that I could also state there was a fracture or vein in the face of that cut. On May 8th, I examined the face of the lower mill cut, and I found a vein from which I took a sample, and which I assayed. I might say at this point that that vein is well defined, it shows copper stains, is heavily oxidized with iron. In addition to that, I was along the road—

Q. By the way, before you go on, did you have any assays made, or did you make any assays from that point—take any samples from that point for assay?

A. I think I stated I took a sample and assayed it myself, from this point in the mill cut.

(Testimony of Parker Liddell.)

The COURT.—Is that point identified on the map by any number?

A. The mill, I believe. It is the lower cut shown on Mr. Tibby's map. (Exhibit No. 5.)

Q. Can you point to it?

A. It was the lower cut that I examined; it was in the face, practically in the center, might have been a little,—what would be the southeast; it was a cut in which there was an old tank, leaching tank.

Mr. SPRINGMEYER.—(Q.) Is this the assay certificate? (Hands to witness.)

A. That is the certificate.

Q. Is that the correct assay of the sample you took from that point? A. It is.

Mr. SPRINGMEYER.—We offer it in evidence.

(The assay certificate is admitted in evidence, marked Defendant's Exhibit No. 15, and reads as follows:)

**Defendant's Exhibit No. 15—Assay Certificate (Liddell Samples).**

"ASSAY CERTIFICATE.

| Sample. | Oz. Gold. | Oz. Silver | % Copper | Total Value |
|---|---|---|---|---|
| No. 3, 32" Quartz Limonite Vein, lower cut for mill building; copper stain..... | 0.06 | .... | 0.60% | $3.36 |

Gold at $20.00 per ounce,
Copper at $0.18 per pound.

PARKER LIDDELL,
Assayer.

5-12-15." [469]

(Testimony of Parker Liddell.)

Mr. SPRINGMEYER.—(Q.) Did you make any examination of any other veins or fractures which you knew existed prior to September, 1913, on the Salt Lake No. 3?

A. Yes, I went up to the grade on the mill road.

Q. Pardon me, where was that?

A. On the mill road.

Q. At about what point?

A. Well, it is probably a couple of hundred feet along the road, northwesterly from the mill.

Q. What did you find there?

A. I found a quartz vein on which a shaft had been sunk on the inside of the road grading, about eight feet deep.

Mr. THATCHER.—(Q.) You don't mean to say that shaft was there in 1913, do you?

A. No, I do not; the road grading was there, but the shaft, to the best of my recollection, was not there—I do not believe it was there.

Q. Then you are not testifying about the shaft?

A. No.

Mr. SPRINGMEYER.—(Q.) Were you testifying as to what you knew existed prior to September, 1913?

A. Well, I knew that there was a vein at approximately that point, and which I had seen at the time I was on the ground in the summer of 1913.

Q. Did you make any further examination of it?

A. I examined this vein, but I examined it at a portion of the vein which was at the bottom of the shaft; I also took the direction of the vein.

(Testimony of Parker Liddell.)

Q. Did you observe what the condition of the part of it was which was exposed prior to September, 1913?

A. I naturally paid most attention to it down in the shaft, but as I recollect it, the vein distinctly shows above the collar of the shaft; that is, what would have been the portion of the road grade which was towards the hillside.

Q. What were those conditions as you knew them prior to September, 1913, as to showing or not showing the presence of a vein [470] or mineral in place?

A. I remember that there was a vein which ran diagonally across the road at approximately this point, prior to September of 1913—there was a distinct quartz vein.

Q. What else was there about its appearance that you recall, if anything?

A. Well, I could see the quartz material in it; you could see the fractures which represented the walls, and if I remember correctly, it was about eight or ten inches in width.

Q. Did you take any samples from that?

A. Not on a portion of it that had been exposed before my recent visit.

Q. Did you find any other parts of Salt Lake No. 3 that in your opinion constitute a mineral bearing vein or fracture, or mineral in place?

A. No, I didn't examine any other place on Salt Lake No. 3.

Q. Now as to the Midas with reference to the same

(Testimony of Parker Liddell.)

period of time, state what you found there.

A. I went up to the small shaft which is shown about 150 feet easterly from the location discovery monument; I got down into the shaft and took a sample from a vein which was exposed through the length of the shaft, and which is easily discernible; the sample I took was from the northerly face as exposed in the shaft.

Q. Have you finished with your answer on that point? A. Yes.

Q. Did you take any samples from there?

A. I took a sample from that point, and assayed it myself.

Q. Is this the assay certificate? (Hands to witness.) A. It is.

Q. Does it correctly represent the assay return or value, the sample you have testified to?

A. It does.

Mr. SPRINGMEYER.—We offer it in evidence.

Mr. THATCHER.—Objected to for the reason it has not been [471] shown this shaft was in the same condition it was prior to September, 1913.

Mr. SPRINGMEYER.—I understood him to say that. Will you please explain that, Mr. Liddell.

A. To the best of my knowledge and recollection, it was in exactly the same condition when I took this sample as it was prior to September, 1913.

The COURT.—(Q.) How far below the collar of the shaft did you take it?

A. I took it pretty well down at the bottom; I had to stoop down to take it.

(Testimony of Parker Liddell.)

Q. How far below the collar would it be?

A. Probably five or six feet from the collar.

Mr. THATCHER.—(Q.) Was it taken from point "21" on Plaintiffs' Exhibit "A"?

A. It was taken from point "25" on Mr. Tibby's map. (Defendant's Exhibit No. 5.)

Mr. SPRINGMEYER.—We offer that in evidence.

Mr. THATCHER.—No objection.

The COURT.—It will be admitted.

(Assay certificate is marked Defendant's Exhibit No. 16, and reads as follows:)

**Defendant's Exhibit No. 16—Assay Certificate (Liddell Samples).**

"ASSAY CERTIFICATE.

| Sample. | Ozs. Gold. | Ozs. Silver | % Copper | Total Value. |
|---|---|---|---|---|
| No. 10. 28" Quartz Vein Discovery Shaft, Midas Lode. Copper Stain..... | 0.04 | 0.10 | Trace | $0.85 |

PARKER LIDDELL,
Assayer.

5-12-15."

Mr. SPRINGMEYER.—(Q.) Do I understand this sample was taken over a width of 28 inches?

A. Yes.

Q. What was the width of the sample you testified to having taken on Salt Lake No. 3; I neglected to bring that out? [472]

(Testimony of Parker Liddell.)

A. It is on the certificate.

Q. Under the mill; is this it, 32? (Referring to Exhibit No. 15.) A. Thirty-two inches.

Q. That was the width of the sample when you made the assay? A. Yes.

Q. Did you make any examination at any other points on the Midas claim? A. No, sir.

Q. You did not? A. No.

Q. Did you examine the tunnel? A. I did not.

Q. You said you took no sample from the tunnel on the Midas? A. Yes.

Q. Did you ever examine the tunnel on the Midas at any time?

A. Yes, I was in the tunnel on the Midas.

Q. Did you examine it prior to September, 1913?

A. Yes, I was in the tunnel prior to September, 1913.

Q. Do you know what the condition of it was then?

A. I didn't make any close examination, but I do remember that there was apparently a vein exposed in the tunnel at the time I made the survey.

Q. Describe that vein as nearly as you can.

A. As I remember it, it was a vein that came from the roof down towards the southerly wall, went diagonally across the face of the tunnel, and I should judge that vein was sixteen inches in actual width; there were distinct walls, that is, there were distinct walls apparent in the face of the tunnel at that time—not in the face of the tunnel, in the roof of the tunnel, that is, the back of the tunnel.

(Testimony of Parker Liddell.)

The COURT.—(Q.) What is the number of that?

A. That is the tunnel marked "A-42" on Mr. Tibby's map.

Mr. THATCHER.—(Q.) Will you tell the jury likewise where that is marked on Exhibit "A"?

A. It is marked "22" on Exhibit "A." [473]

Mr. DETREICH (JUROR).—Was that a crosscut tunnel or a drift tunnel?

A. At this point it looked to me like it was a drift tunnel.

Q. You could not say definitely?

A. No, the vein at that point cut through the tunnel; whether the object had been to run continuously on that or not, I could not say.

Mr. SPRINGMEYER.—(Q.) For what distance was the vein exposed, so far as you observed?

A. Well, I don't remember of seeing it but just in the roof of the tunnel, probably—well, I could not testify to it, over just a few feet, probably four feet.

Q. Now going to the Evening Star; will you please state what you found in the way of veins or fractures or mineral in place, as it existed prior to September, 1913?

A. Well, I went to the cut which is marked number "60," and lies easterly from the location discovery monument on the Evening Star lode.

Mr. THATCHER.—(Q.) Will you point that same cut out on Plaintiffs' Exhibit "A"?

A. It is Exhibit Number 5, Mr. Tibby's map; I believe that is the one that corresponds to "20" on Plaintiffs' Exhibit "A." At the time I was there,

(Testimony of Parker Liddell.)

in September, or previous to September, 1913, there was simply an open cut run from the bottom of a small gulch into the hillside, in an easterly direction, but at the time I returned to it, at the mouth of the cut, a shaft had been sunk.

Q. At the mouth? A. Mouth of the cut.

Q. The mouth of the cut?

A. Yes, it was close to the mouth of the cut. Of course the shaft, as I remember it, was about four feet in width, but the shaft was sunk about eight feet deep, and the opening made to the east of the shaft, for probably ten feet altogether, and this opening from the bottom of the shaft [474] appeared to be almost directly under the direction of the cut on the surface.

Mr. SPRINGMEYER.—(Q.) Did you take any samples from that part of it which was exposed, prior to September, 1913?

A. Well, the bottom of the cut that was exposed previous to September, 1913, had been dug out, and not being able to take a sample at that point, I got down into the shaft and took two samples standing up, which would have been from a position directly under the bottom of the cut as it existed at the time I was first there.

The COURT.—(Q.) Just state that again, please.

A. I took two samples standing up in the shaft, which would have been directly under the bottom of the cut as it existed upon the first visit.

Mr. SPRINGMEYER.—(Q.) Where did you stand?

(Testimony of Parker Liddell.)

A. I stood on the bottom of the shaft.

Q. How deep was that shaft?

A. Well, it is about eight feet deep.

Q. Did you stand on something at the bottom?

Mr. THATCHER.—Now, don't lead him, Mr. Springmeyer.

A. I stood on the bottom of the shaft.

Q. Mr. SPRINGMEYER.—Please describe just how you stood?

A. Well I faced the southerly wall of the shaft opening, standing in an ordinary position; I took two samples from the face exposed, one above and one below a distinct plane of movement in the rock.

Q. Do you know over what width you took those samples? A. Yes.

Q. Did you assay those samples yourself?

A. I did.

Q. Will you examine these and see if they are the assay certificates? (Hands to witness.) [475]

A. Those are the two.

Mr. SPRINGMEYER.—We offer those in evidence.

Mr. THATCHER.—We object to them on the ground it has not been shown they were taken from a cut or opening exposed at the time of the former trial.

Mr. SPRINGMEYER.—I submit that the showing is sufficient, that they were taken from the part which was exposed at the time the placer claim was located.

The COURT.—Well, do you say that, Mr. Liddell;

(Testimony of Parker Liddell.)

were those samples taken from a point that was exposed prior to September, 1913?

A. Well, they were taken directly under the exposure.

Q. How many feet under the exposure?

A. Well, covering the total width of the samples, it would be from four to six feet.

Mr. SPRINGMEYER.—(Q.) You didn't then, reach up to the top of the cut?

A. No, I could not reach clear to the top.

Q. You mean that you reached upward toward the top of the cut?

A. Yes, the parting plane which divides the formation at that point dipped at an angle westerly, and I took one sample diagonally above that parting, and one diagonally below, so that the line of the sample ran from a point that was pretty well up, as high, or pretty near as high, as a person could reach ordinarily, down to two or three feet below that point.

Mr. SPRINGMEYER.—We offer those in evidence; we submit that is such reasonable proximity as to make the samples of evidential value.

Mr. THATCHER.—Same objection, if the Court please.

The COURT.—Well, I will exclude those. You may have your exception.

Mr. SPRINGMEYER.—We except on the ground it is proper and competent evidence, and of probative value. [476]

The COURT.—Do you claim that is the vein where the Jorys made their discovery?

(Testimony of Parker Liddell.)

Mr. SPRINGMEYER.—No, we don't claim—that is not the discovery point, I believe, but it was exposed prior to the location of the placers. I believe that was the work that Mr. Jurey testified was assessment work—annual labor—in the year 1912.

The COURT.—I will exclude them, and you may have an exception.

Mr. SPRINGMEYER.—I ask that they be marked for identification.

(Assay certificates of Samples No. 6 and No. 7 are marked for identification.)

The COURT.—Those are not on that vein which they claim as their discovery, and they went four feet below any exposure which was in existence at the time the placers were located, as I understand it?

Mr. SPRINGMEYER.—(Q.) You said from four to six feet below the exposure prior to 1913 was where you took the samples?

A. About three to five feet below, I intended to say; I don't remember whether I exactly said that or not.

The COURT.—(Q.) I understood you to say four to six, and I put it down four; you say now three to five?

A. I think three to five would be nearer; I could not state the exact distance; I didn't measure those exact depths.

Mr. SPRINGMEYER.—(Q.) Did you make any other examination on the Evening Star as to the conditions prior to September, 1913?

A. I went into the open cut on the southerly end of the Evening Star lode.

(Testimony of Parker Liddell.)

Q. Will you please designate that cut on the two maps.

A. On Defendant's Exhibit 5, Mr. Tibby's map, it is marked point "69," and on Exhibit "A" it is marked "24." [477]

Q. What did you find there?

A. Well, it was quite a large open cut; there was a crushed quartz material exposed showing iron stains, with distinct walls dipping, as I remember it, easterly; and I took a sample along the easterly side, running from towards the surface of the ground down towards the bottom of the cut, which I believed to represent the vein exposed in that cut, and I took the sample and assayed it myself.

Q. Over how wide a distance did you take the sample? A. It is on the certificate.

Q. Did you testify that that cut was in existence prior to September, 1913?

A. The cut was there, but as I remember it, the bottom of the cut was filled in with what would naturally slough from the sides of the cut, and I believe there was some vegetation growing on the bottom of the cut.

Q. From the point from which you took this sample was the condition the same prior to September, 1913?

A. I believe the point from which I took the sample was exposed at that time.

Mr. THATCHER.—(Q.) All of it, or part of it—did you take it up or down, or running?

A. I took it running up the side of the cut. It is

(Testimony of Parker Liddell.)

the cut on the lower end of the Evening Star lode designated as point "69" on Mr. Tibby's map.

Mr. SPRINGMEYER.—We offer it in evidence; I think the showing is sufficient.

Mr. THATCHER.—(Q.) Do you know whether or not that was taken from points which were the same as they were in September, 1913? I don't object to it if it was, if it was not, I don't want it in.

A. I believe it is from a point that was exposed at that time.

Q. You are satisfied of that?

A. Well, I am practically satisfied that the condition of the cut was such that it was exposed [478] prior to September, 1913.

The COURT.—It will be admitted.

(The assay certificate is marked Defendant's Exhibit No. 17, and reads as follows:)

**Defendant's Exhibit No. 17—Assay Certificate (Liddell Samples).**

"ASSAY CERTIFICATE.

| Sample. | Ozs. Gold. | Ozs. Silver | % Copper | Total Value |
|---|---|---|---|---|
| No. 9. 56" Loose Quartz Filling Open Cut on South End Evening Star Lode..... | 0.02 | 1.00 | Trace | $0.90 |

PARKER LIDDELL,
Assayer.

5-12-15."

Mr. SPRINGMEYER.—(Q.) Did you make any other examinations of anything in the way of a vein

(Testimony of Parker Liddell.)

or mineral in place on the Evening Star which was exposed prior to September, 1913?

A. I didn't make an examination of anything further. I would like to say with reference to the cut which is about eighty feet easterly from the discovery monument of the Evening Star, that the cut as exposed before September, 1913, showed an area that was distinctly colored by iron oxide, and that at a point approximately twenty feet in a westerly direction from that cut there was a distinct rock cropping, which was considerably weathered, and which showed such indentations that you might believe the field-spar minerals contained in the rock had been dissolved; that is, the rock had a more or less porous appearance, which is indicative of considerable leaching at that point.

Q. Can you indicate that point according to numbers or notations on either of the maps?

A. It is a point that is approximately twenty feet northwesterly from what is cut number "60" on Mr. Tibby's map, Defendant's Exhibit number 5.

Q. State whether or not that material, in your opinion, might carry values in gold, silver, or copper?

Mr. THATCHER.—Objected to as immaterial.

[479]

Mr. SPRINGMEYER.—I think he is as competent as an ordinary prospector or miner to testify to that.

The COURT.—That is on that cropping?

Mr. SPRINGMEYER.—Yes.

The COURT.—I will allow him to testify from the

(Testimony of Parker Liddell.)

appearance of the cropping as he saw it, how much he thinks it would carry, if he can.

Mr. SPRINGMEYER.—I asked him whether he thought it would carry values.

WITNESS.—Well, I think it might carry some value.

Q. In what metal?

A. Well, if any value at all it would probably be in gold; the appearance of that rock, though would lead a person to believe from general observation, that any other valuable minerals, such as copper, would have been leached from that immediate vicinity.

The COURT.—(Q.) Any other minerals except what, had been leached?

A. Any other minerals such as copper had been leached.

Q. What mineral would not be leached?

A. Well, there is none that would not probably be leached to some extent, but in the strict term of minerals, the quartz would probably remain; but practically all the metals would conceivably be easily leached in that character of rock.

Q. (Mr. SPRINGMEYER) That was on the Evening Star claim, you say?

A. On the Evening Star, yes.

Q. Does that indicate anything with reference to the copper—the presence of copper?

A. Well, I should judge from the appearance of the cut and the appearance of such rock as I found cropping there, that a person would be warranted in exploring it for copper.

(Testimony of Parker Liddell.)

Q. Will you please describe to the jury what panning is, Mr. Liddell? [480]

A. Panning is an operation that is usually followed by the prospector to determine what mineral or what metal may be in the rock to be determined or to be panned, and he usually grinds the rock up—a few pieces of rock in an iron mortar with an iron pestle; other means may be used, but the usual operation is to pound the rock up as fine as possible, as he wishes, then take a pan—quite often one of the smaller size egg pans, put the pounded rock into this pan, and immerse it in water, and by a system of washing and shaking, all the heavier ingredients will stay at the bottom of the pan, so when the operation is finished you have a very small quantity of the original material left, and by manipulating the pan, you can bring any of the gold or concentrates or heavier material to a little point along the bottom edge of the pan.

Q. Will you please state whether panning is always a conclusive method of determining the presence of gold or metal or minerals?

A. Panning at best is but a crude method of determining whether any material is actually valuable; it is a means that is largely used by the prospector, especially for determining gold, but the method is entirely inaccurate, and is not conclusive by any means; the actual value cannot be determined by a method of panning, and only approximate value can be determined, provided, however, that the utmost care is taken in the system followed; that is, you

(Testimony of Parker Liddell.)

ought to take a certain weight of rock, you ought to crush it to a certain mesh, that is, to a certain degree of fineness, and you ought to use extreme care to see that none of the individual particles of gold, or the colors as they are called, wash over the edge of the pan; and, as quite often happens, the piece of rock will not pan when it will assay appreciably, and oftentimes assay to quite a large extent, but still does not show the gold in the pan. [481]

Q. Now, Mr. Liddell, from your examination of these three claims and in your opinion as a miner and mining man, what is the prevailing formation of the solid rock?

Mr. THATCHER.—Have you qualified him as a geologist?

Mr. SPRINGMEYER.—I have qualified him as a mining man, who is a graduate of the Colorado School of Mines.

Mr. THATCHER.—That does not make him an engineer.

Mr. SPRINGMEYER.—(Q.) Will you please state again what experience you have had, and what your technical training has been?

A. Well, I received a degree as engineer of mines in the Colorado School of Mines in Golden, Colorado; subsequent to that time I worked as an actual miner in a number of mines; I have been assayer and surveyor for a number of mining companies; have made some examinations both for placer and lode deposits, and for the last year and a half, I have been operating the Rex Mine and Mill, with associates, in con-

(Testimony of Parker Liddell.)

junction with other properties in the Gold Circle Mining District at Midas, Nevada, Elko County.

Q. How many years experience as a miner have you had in these various properties in which you have worked?

A. As an actual miner, you mean?

Q. Yes; in all your experience together, without going over the names of the properties which you gave in opening, in which you were employed?

A. If you mean as a miner underground, I was engaged possibly a couple of years; in general mining experience, I have had about twelve years experience.

Mr. SPRINGMEYER.—Are you satisfied that he can qualify, either as a miner or as a mining man?

Mr. THATCHER.—Yes, the last time he was over here, he refused to qualify as a mining man; I wanted to know whether he did want to qualify this time; that is all I wanted to know.

(By direction the reporter reads the question.)

[482]

A. Well, I would be very loath to make an exact statement as to the formation.

Mr. SPRINGMEYER.—(Q.) Please state, then, whether in your opinion it is igneous or sedimentary?

A. Well, from observations I have made on the ground, I would incline to the belief that it was igneous.

Q. Well, have you arrived at any conclusions as to the kind of igneous rock it was?

A. I would consider that it was one of the later

(Testimony of Parker Liddell.)

tertiary eruptive rocks.

Q. Would you undertake to say what it is?

A. If I were describing it to somebody, I would probably say it was a rhyolite, and then I would not want that to be understood as a definition of the rock; I would not go on record as saying that positively it was or was not igneous rock. From the conditions I found there, and from the experience I have had with rocks I think it would be utterly impossible for any man to make a positive statement regarding the formation of the territory comprised in these three claims, unless he was qualified to absolutely determine it by the best scientific methods known at the present time. Anybody that will make a statement that that was or was not a certain kind of rock, I think is exceedingly—well, exceeding the probability of their being correct.

Q. Now you have heard some evidence on the part of the plaintiffs here as to the material in these fractures, the shear zones or fracture zones, being hungry looking rock; will you please state whether or not the appearance of the rock is always determinative of its value?

A. The appearance of a rock can never be depended upon to determine in the slightest degree the value of the rock.

Q. Can you describe that any further?

A. Well, I would not wish to qualify it; I think the actual appearance [483] of the rock cannot be assumed in any manner to determine the actual value of the rock.

(Testimony of Parker Liddell.)

Q. Is it a fact that what sometimes may be called hungry looking rock carries values?

A. The term "hungry looking rock" is entirely indefinite, and what one person might term hungry looking rock might, and has at times proven to be exceptionally good ore.

Q. And is the opposite sometimes the case, that is, sometimes likely looking rock does not carry values. A. Quite often the case.

Q. Have you any samples to illustrate those matters, Mr. Liddell?

A. I have a few samples there that I believe would illustrate the points.

Q. Will you please examine these in this box, and see whether they are the samples to which you refer?

(RECESS FOR FIVE MINUTES. AFTER RECESS.)

Q. Mr. Liddell, do those samples of rock illustrate what you have said regarding the appearance of rock as not being material?

Mr. THATCHER.—He didn't say it was material, he said it might be deceptive.

Mr. SPRINGMEYER.—Well, as "deceptive"; that is better; thank you, General.

A. I should say these samples here would very fairly represent the idea that the appearance of rock cannot be taken as a criterion of the actual mineral value of the rock.

Q. Do you know where those samples are from?

A. Yes.

Q. Who took the samples?

(Testimony of Parker Liddell.)

A. I accumulated these samples myself.

Mr. SPRINGMEYER.—I offer them in evidence.

Mr. THATCHER.—No objection.

(Samples contained in box are marked Defendant's Exhibit No. 18.) [484]

The COURT.—That is simply to show that you cannot always judge of rock by its appearance.

Mr. SPRINGMEYER.—That is all.

The COURT.—I presume counsel will admit that?

Mr. THATCHER.—Yes, I admit that.

Mr. SPRINGMEYER.—(Q.) Just describe the place from which each one of those was taken, and *that* it carries in value, if you know?

A. Well, the rocks are taken from a number of sources, that I individually, took them. Sample number one is a piece of rock that was broken from what is known as the Colorado-Grandy vein in Midas, Nevada.

Q. Do you know what that carries, approximately?

A. Well, I can tell you exactly.

Q. I have assay certificates here, if that will refresh your memory. May I use that method, General Thatcher?

Mr. THATCHER.—Yes.

WITNESS.—Sample number one assays $2.20; I made the assay myself.

Mr. SPRINGMEYER.—Now go to the next sample.

A. Sample number two is a piece of rock that came out of the same vein, and was broken down in close proximity to sample number one.

(Testimony of Parker Liddell.)

Q. What does it carry?

A. It carries $1.80 in gold and silver.

Q. Now the next one?

A. Sample number 4 is a piece of rock that I took out of a stope in the Rex mine, in the center of the ore chute that we are mining at the present time; it carries a value of $2.68 in gold and silver.

The COURT.—(Q.) That is a ton?

A. Per ton, yes, sir. All these values relate to value per ton.

Mr. SPRINGMEYER.—Now the next sample.

A. Sample marked number 5 is a piece of ore from the Missing [485] Link mine in Midas, and carries a value of $673.93 in gold and silver.

Q. How much did you say? A. $673.93.

Q. In your opinion as a mining man, Mr. Liddell, would any of those rocks pan?

Mr. THATCHER.—Do you know?

Mr. SPRINGMEYER.—(Q.) Do you know whether any of those rocks would pan?

A. Well, I didn't pan any one of these particular pieces.

Q. Did you pan any pieces like them?

A. I have panned quite a few pieces that are similar to some of them.

Q. Did you get any pannings?

A. Sometimes I would and sometimes I would not.

Q. It is not conclusive, then, as to showing values, as far as that type of rock is shown, is that correct?

A. Panning is not conclusive, no.

Q. Is that what is known to the miner as "hungry rock"?

(Testimony of Parker Liddell.)

Mr. THATCHER.—I object. The looks of the rock itself will tell whether it is hungry looking.

Mr. SPRINGMEYER.—I submit the question is proper.

The COURT.—Well, it seems to me the whole thing is immaterial. If it were rock taken from the ground in controversy, it might enlighten us. We can confess that some rocks look hungry and some don't; that is the effect of it. I think you have gone into that far enough, and if it appears you are prejudiced in any way in the matter, you can take it up again, but I don't see the materiality of it.

Mr. SPRINGMEYER.—We don't care to pursue it further. May we withdraw Mr. Liddell for a few minutes, to show the nature of the work on that cut?

Mr. THATCHER.—No objection. [486]

**Testimony of Joseph Ralph, in His Own Behalf.**

Mr. JOSEPH RALPH, the defendant, called as a witness, after being sworn, testified as follows:

Direct Examination by Mr. SPRINGMEYER.

Q. Mr. Ralph, are you familiar with Salt Lake No. 3 mining claim in Copper Canyon Mining District, Lander County, Nevada? A. Yes.

Q. Do you know the working described as cut number 2 on Plaintiffs' Exhibit "A"? A. Yes.

Q. Do you know what the condition of that was prior to September, 1913. A. Yes.

Q. State what it was?

A. There was at that point a very pronounced outcrop of rock.

Mr. THATCHER.—No, we are talking about the

(Testimony of Joseph Ralph.)

cut. I move to strike out the rock.

Mr. SPRINGMEYER.—(Q.) Just answer the question as to the cut itself, without describing anything with reference to mineral outcrops of veins.

A. There was a slight cut there.

Q. How large was it?

A. I should imagine possibly eight or ten feet long. maybe seven; and as regards the width or depth, it was more scoop shape; of course it had the appearance of being very old, and the sides had eroded, naturally, and sagebrush, I believe, was growing to the west; it would be very hard for a man to say just exactly how long that cut was, and exactly how deep, if a horizontal line was put over it, but I should imagine anywhere from eighteen inches to two feet.

Mr. SPRINGMEYER.—That is all. [487]

Cross-examination.

Mr. THATCHER.—(Q.) You say you knew of the existence of the cut in 1913, prior to September?

A. Yes, sir.

Q. When before that did you find out about it?

A. When before did I find out about it?

Q. Yes; when did you first find that cut?

A. I was over that ground several times before that.

Q. Well, when did you find that cut?

A. I could not give you the exact date.

Q. Can you give it to me approximately?

A. I cannot give a single date, but I was there at the canyon on a great number of occasions before

(Testimony of Joseph Ralph.)

1913, because that was the time of the jumping of the claims.

Q. That was the time of the jumping of the claims?

A. Yes.

Q. And you found this cut before that?

A. Yes, sir.

Q. And saw it and examined it?

A. I didn't make a close examination.

Q. Did you ever tell this Court about that cut before?

A. Not to the best of my knowledge I didn't.

Q. In the former trial, when the witnesses and the attorneys and the Court were trying to locate a cut on that ground, did you say anything about it?

A. I don't remember.

Q. You didn't, as a matter of fact, say anything about it?

A. The transcript of my evidence is the best testimony.

Q. Do you remember whether you said anything about it or not? A. I do not remember.

Q. Did you ever see this before; I will ask if that is your signature? (Hands to witness.)

A. Yes, sir.

Q. Did you on the 26th day of May, 1914, make an affidavit before Wayne T. Wilson, notary public in and for Washoe County? A. Yes, sir. [488]

Q. Mr. Belford's office? A. Yes.

Q. Is that the affidavit that you made? A. Yes.

Q. Is that the same cut referred to in that affidavit that you have just been testifying about?

(Testimony of Joseph Ralph.)

A. Let me read it. Yes, that is it.

Q. Then the first time you ever saw that cut, according to that affidavit, or the first knowledge or information you had of the existence of said monument, you got from Joseph Jurey, did you not?

A. Not exactly; I can explain that, and I am quite willing to stand on that testimony of that affidavit.

Q. Will you kindly read that affidavit to the jury?

A. (Reading:) "Joseph Ralph being first duly sworn, on oath deposes and says: That he is familiar with the ground embraced within the exterior limits of the Salt Lake No. 3 lode mining claim situate in Copper Canyon, Lander County, Nevada; that after the trial of this cause there was pointed out to him by Joseph Jurey a certain post and monument located in close proximity to an open cut in the northerly end of said Salt Lake No. 3 lode mining claim; that the first information or knowledge he had of the existence of said monument and post was that received from the said Joseph Jorey in December, 1913; that said post and monument are located 111 feet from the east side line of said Salt Lake No. 3, and are approximately 25 feet west of the westerly corner of the mill; that at the time said cut, monument and post were pointed out to affiant he examined the ground and found a small dump, and what remained of an old cut, all having the appearance of having existed for a number of years prior to his examination, and from which it was only possible to conclude that it had been subject to the action of the elements for many years; that

(Testimony of Joseph Ralph.)

in such cut affiant found a lode in place in working thereafter at such point; affiant further states that he was accompanied [489] by Mr. Parker Liddell, Deputy U. S. Mineral Surveyor, when they were advised of the existence of such post, monument and cut by Joseph Jurey, as above set forth; affiant further states that from conversations which he has had with Joseph Jory and John Jory he believes such cut was the discovery cut on which the Salt Lake No. 3 lode mining claim was located by in 1897."

Q. Did you ever see an affidavit made by Joseph Jurey, and recorded by you, with reference to the annual labor on this claim for the years 1913 and 1914?

Mr. SPRINGMEYER.—I object to that on the ground it is immaterial and not proper cross-examination.

The COURT.—I don't know yet whether it is or not; it may have reference to this very matter; if it doesn't, it is not proper cross-examination.

Mr. THATCHER.—(Q.) Did you ever see an affidavit of Mr. Joseph Jurey, made about the 16th day of March, 1914, with reference to the annual labor on the Salt Lake No. 3?

A. I don't remember; if you will show it to me I will try and identify it.

Q. Did you not, in connection with that affidavit, attach your own affidavit, stating that you had personally paid the bills for the foregoing affidavit.

A. If you have it there, most probably so.

(Testimony of Joseph Ralph.)

Q. Well don't you remember, Mr. Ralph?

A. I have signed—

The COURT.—If he wishes to see it before stating that he signed it, he may.

Mr. THATCHER.—This is somewhat a test of memory, the witness having testified to these things.

The COURT.—Well, if he doesn't remember, he may look at his signature to see whether he signed it or not. [490]

Mr. THATCHER.—I haven't the original.

Q. I call your attention to an exhibit, marked at the top page 6 and 7; will you kindly look that over, Mr. Ralph. (Hands to witness.)

A. I will admit it has every appearance of being—I won't swear that it is, but it has every appearance of the affidavit I made; and when I said I did not remember in relation to mining assessment work, I have had maybe a hundred claims to make these affidavits on, and when I say I do not remember, you must give me credit for trying to answer the question.

(The Court admonishes the jury, and at 3:30 P. M. an adjournment is taken until Monday, May 31st, 1915, at 10 o'clock A. M.) [491]

Monday, May 31st, 1915.

Court convened 10 A. M.

(All parties present.)

Cross-examination of Mr. JOSEPH RALPH, Resumed.

Mr. THATCHER.—(Q.) Mr. Ralph, I called your attention at the close of the hearing on Satur-

(Testimony of Joseph Ralph.)

day to the affidavit of annual labor Copper Canyon group, marked for identification on cross-examination of Mr. Ralph, will you examine that? (Handing to witness.) That is a copy of an affidavit of Mr. Joseph Jurey. A. Yes.

Q. With which you are familiar? A. Yes.

Q. And to which you attached your affidavit, at the end of it? A. I believe I attached my affidavit.

Q. Read on a little further, it is on the second page. A. Yes. The name of the notary public is wrong; the name of the notary public appears here as Dean F. Bozton; it is Dean F. Brayton.

Q. Mr. Brayton was a member of the firm of Gustin, Gillette & Brayton, formerly your attorneys in this proceeding? A. Yes.

Q. You attached your affidavit to the affidavit of Mr. Jurey? A. Yes.

Q. Concerning the annual labor?

A. As near as I can remember, yes.

Mr. THATCHER.—This is in evidence; this is one of the affidavits offered in evidence by you as proof of annual labor, to which I made no objection; it is not marked.

Mr. SPRINGMEYER.—As I understood it, the Court had not passed on the matter as to which of the affidavits would be admitted in evidence and which would not; his Honor took them to look them over to see which ones conformed to the law and which did not.

The COURT.—No, I took them and expected you to call my attention [492] to them later.

Mr. THATCHER.—I didn't make any objection to that one; that one fully complies with the statute; I specifically designated pages 6 and 7 as not objected to.

The COURT.—If they are under advisement I will take them up and dispose of them right away.

Mr. SPRINGMEYER.—Before we leave that, to settle the matter of the affidavits of labor, do I understand that the rest of the affidavits of labor have been rejected?

The COURT.—Those to which no objection was made have been admitted, and the others, I expect you to look them over and discuss them later. Counsel objected to them on the ground they did not comply with the statute. If you do not care to argue the matter, I will take them up at some intermission, and look them over.

Mr. SPRINGMEYER.—We will take them up afterward.

Mr. THATCHER.—I would like to have the record show that this was admitted in evidence as a distinct exhibit, and given a number.

(Affidavit of Labor marked Defendant's Exhibit No. 19, and reads as follows:)

**Defendant's Exhibit No. 19—Affidavit of Labor Copper Canyon Group.**

"AFFIDAVIT OF LABOR, COPPER CANYON GROUP.

State of Nevada,
County of Lander,—ss.

Before me, the subscriber, personally appeared

Joseph Jurey, who being duly sworn saith: That at least $100.00 worth of work or improvements were performed upon each of the following lode mining claims, situated in Battle Mountain Mining District, Lander County, Nevada, between the first day of January, 1913, and the 31st day of Dec., 1913; that said expenditures consisted of the following work—sinking a shaft from the surface, [493] at or near the roadway leading to the old mill on the Salt Lake No. 3 Lode Mining Claim to a depth of 10 feet, and driving a 4'x6' open cut 8 ft. in rock from just below the roadway leading to the mill on Salt Lake No. 3 lode mining claim, extending an adit 12 ft. and driving a drift therefrom 6 ft. upon the Reona claim with said adit about midway between the side lines and about 600 feet from the south end line, said adit openings being extended 18 feet, a trench and shaft on the south end line of the Salt Lake No. 1 lode mining claim and the north end line of the Salt Lake No. 4 lode mining claim. The shaft being 18 feet deep driven for the benefit of the Salt Lake No. 1 and Salt Lake No. 4 lode mining claims. Driving an adit whose portal is on the Copper Queen lode mining claim and which is headed for a point representing the southwest corner of the John John lode mining claim. The said adit being 65 ft. in length and constituting a work for the development of the Copper Queen, John John, Salt Lake and Salt Lake No. 5 lode mining claims, driving a 4'x6½x55 ft. adit at a point slightly north of the N. E. corner of the Washington patented lode mining claim situated upon the Lucy lode mining claim and being

driven in the direction of the Comet lode mining claim, said work being done for the benefit of the Lucy lode and Comet lode mining claims. Extending what is known as the Eagle Tunnel for a distance of 39 feet, said work being done as assessment work for the Blue Jacket and Eagle lode mining claims and which said work directly benefits both of said claims. Driving an adit the portal which is on the Midas lode mining claim directly toward a point representing the N. W. corner post of the Yellow Jacket lode mining claim a distance of 46 feet, said adit directly benefiting and being driven for the purpose of assessment work upon the Yellow Jacket, Salt Lake No. 2 and Midas lode mining claims. [494]

Such expenditures were made at the expense of William Lamont as Liquidator of the Glasgow and Western Exploration Co., Ltd., a corporation for the purpose of complying with the law and holding said claims.

JOSEPH JUREY.

Subscribed and sworn to before me this 16th day of March, 1914.

[Seal] L. A. LEMAIRE,
Notary Public.

My commission expires July 13th, 1915.

State of Utah,
County of Salt Lake,—ss.

Joseph Ralph, of lawful age, being first duly sworn, on oath deposes and says that he is attorney in fact for the Liquidator, The Glasgow and Western Exploration Co., Ltd., a corporation, Wm. Lamont, that as such attorney in fact, he personally

(Testimony of Joseph Ralph.)

paid bills amounting to not less than $1,500 for the assessment work on the claims mentioned in the above affidavit of labor.

JOSEPH RALPH.

Subscribed and sworn to before me this 17th day of March, 1914.

DEAN F. BOZTON,
Notary Public.

My commission expires Aug. 14th, 1914.

Recorded at the request of Joseph Ralph Mar. 24, A. D. 1914, at 6 o'clock P. M. at page 19 of Records of Battle Mountain Mining District, Lander County, Nevada.

H. R. LEMAIRE,
District Recorder.

This is to certify that the above is a true and correct copy as the same appears in the records of the Battle Mountain Mining District.

H. R. LEMAIRE, (Seal)
District Recorder. [495]

Mr. THATCHER.—(Q.) Do you know from this affidavit, or any other information, where the work was performed for the year ending December 31st, 1913, upon the Salt Lake No. 3? A. December?

Q. Yes, for the year ending December 31st.

A. On the Salt Lake No. 3?

Q. Yes, sir, do you remember? A. Yes.

Q. Where is it—do you want this? (Handing Defendant's Exhibit No. 19 to witness.)

A. Yes. I am looking for the year here.

Q. It is right at the top of the page.

(Testimony of Joseph Ralph.)

A. No, there is an error here somewhere.

Q. Well, from that affidavit where was the annual labor performed for the year 1913?

Mr. SPRINGMEYER.—I object on the ground it is not proper cross-examination. Ask him where it was performed; he didn't make that affidavit himself; he says he knows where it is, but counsel puts that question from the affidavit of Mr. Jurey.

The COURT.—If the affidavit shows where it was done, that settles it; but if counsel wants to ask a question as to the difference between the affidavit and the witness—

WITNESS.—This was an affidavit of the work of 1914.

Mr. THATCHER.—I think you are mistaken—just read it.

WITNESS.—I will read it aloud.

Mr. SPRINGMEYER.—Read it to yourself; all you want to do is to understand it.

A. I think it would be less wearying to you to read it aloud than if I were here hibernating and browzing by myself. (Reads:) "That at least a hundred dollars worth of work and improvements were performed"—

Mr SPRINGMEYER.—(Intg.) Read it to yourself, counsel does not care to have you read it aloud. [496]

Mr. THATCHER.—I have no objection.

Mr. SPRINGMEYER.—Read it aloud.

WITNESS.—(Reading:) "Before me, the subscriber, personally appeared Joseph Jurey, who be-

(Testimony of Joseph Ralph.)

ing duly sworn saith: That at least $100 worth of work or improvements were performed upon each of the following lode mining claims, situated in Battle Mountain Mining District, Lander County, Nevada, between the 1st day of January 1913 and the 31st day of Dec. 1913; that said expenditures consisted of the following work: Sinking a shaft from the surface, at or near the roadway leading to the old mill on the Salt Lake No. 3"—that is correct; it is the 1913 work; that is right.

Mr. THATCHER.—(Q.) Go right ahead with reference to the Salt Lake No. 3.

A. (Reading:) "Sinking a shaft from the surface, at or near the roadway leading to the old mill on the Salt Lake No. 3 lode mining claim to a depth of 10 feet"; that was done for 1913 assessment work.

Q. Go on and read from the affidavit.

A. (Reading:) "Driving a 4'x6' open cut 8 ft. in rock from just below the roadway leading to the mill on Salt Lake No. 3 lode mining claim, extending an adit 12 ft. and driving a drift therefrom 6 ft. upon the Reona claim"—that is going off; you don't want it on any other claim.

Q. No, just what appears on Salt Lake No. 3.

A. To go over it again, this specifies the Salt Lake No. 3 for 1913—a shaft on the roadway.

Q. While you are on that let me call your attention to shaft number one; it was shaft number one, was it not, as marked on Exhibit "A"; now what was the other one?

A. Driving a four by six open cut eight feet in

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(Testimony of Joseph Ralph.)

rock just below the roadway leading to the mill. [497]

Q. Just below the roadway leading to the mill?

A. Yes.

Q. Does that correspond with number 2?

A. Yes.

Mr. THATCHER.—That is all; you may examine.

Redirect Examination.

Mr. SPRINGMEYER.—(Q.) Mr. Ralph, in reference to the affidavit exhibited to you by counsel on Saturday concerning the condition of this cut on the date of your examination with Mr. Jurey and Mr. Liddell, please explain just exactly what the condition was then, and what it was at the times you had seen the same place on prior occasions previously.

Mr. THATCHER.—Objected to as not redirect examination.

Mr. SPRINGMEYER.—Evidently the purpose of your cross-examination was to show that the witness was incorrect when he said that the cut was about a foot and a half or two feet deep prior to September, 1913.

Mr. THATCHER.—No, my purpose, if the Court please, was to show that Mr. Ralph testified that he saw this cut prior to September, 1913, and he makes an affidavit that he didn't know of it until December, 1913.

WITNESS.—That affidavit says that until that date I never saw any monument or stake.

(Testimony of Joseph Ralph.)

Mr. THATCHER.—The affidavit is the best evidence—well, go ahead.

(By direction the reporter reads the question.)

Mr. SPRINGMEYER.—The affidavit referred to is this: (Reads:) "Joseph Ralph being first duly sworn, on oath deposes and says: That he is familiar with the ground embraced within the exterior limits of the Salt Lake No. 3 lode mining claim situate in Copper Canyon, Lander County, Nevada; that after the trial of this cause there was pointed out to him by Joseph Jurey a certain post and monument located in close proximity to an open cut in the [498] northerly end of said Salt Lake No. 3 lode mining claim; that the first information or knowledge he had of the existence of said monument and post was that received from the said Joseph Jurey in December, 1913; that said post and monument are located 111 feet from the east side line of said Salt Lake No. 3, and are approximately 25 feet west of the westerly corner of the mill; that at the time said cut, monument and post were pointed out to affiant he examined the ground and found a small dump, and what remained of an old cut, all having the appearance of having existed for a number of years prior to his examination, and from which it was only possible to conclude that it had been subject to the action of the elements for many years; that in such cut affiant found a lode in place in working thereafter at such point." Now explain just exactly what the state of affairs is.

A. There was a previous trial in this matter in

(Testimony of Joseph Ralph.)

which I applied for an injunction order to restrain certain parties from entering this ground; and that trial came up here in this court in December, 1913.

Q. Pardon me, Mr. Ralph, I mean only with reference to this particular point.

A. Yes, I am only going to testify as regards that one particular spot.

Q. You are not answering my question then, Mr. Ralph.

Mr. THATCHER.—Mr. Ralph is a very intelligent man.

Mr. SPRINGMEYER.—I know he is, but I don't want to burden the jury with a lot of immaterial matter.

Q. What is the situation with reference to this cut, this monument and this post at the time that you made this affidavit, and prior thereto?

A. It is the same, so far as I could notice the cut, with one exception, I had never seen a monument until Mr. Liddell here called my attention to it in this courtroom in the [499] last trial, which I was going to try to explain if you will let me do it in my own way.

Q. Had you ever seen a post there?

A. I had never seen a post there or monument; I had never heard of a post or discovery monument of Salt Lake No. 3, until I heard John or Joseph Jory or Mr. Liddell testify—all three of them—on this witness-stand in 1913, and Mr. Liddell or Mr. Jurey, or both of them, spoke then of a monument or post—I think Mr. Liddell spoke of a post, and

(Testimony of Joseph Ralph.)

whether Mr. Jurey spoke of a post and monument, I don't know; and they said there was a post a little west and a little north of the mill, and I told Mr. Liddell then I had never seen anything, and Mr. Liddell told me on that occasion, either in this courtroom or outside in the corridor during recess, he said, "If you haven't seen a post there, there is a post there"; and acting on that I went back afterwards, and investigated, and saw the post. I saw the post then, and there was no monument; and the first time I ever saw that post was when I went back there with Mr. Jurey; and I never knew a post existed until Mr. Liddell told me in this building; and when I went back there then I concluded that may be the Salt Lake No. 3 discovery, and I made that affidavit.

Q. Now, Mr. Ralph, with reference to the existence of the cut or depression, state whether or not you had seen that previously?

A. I had seen the cut and depression, certainly.

Q. Prior to this occasion?

A. Certainly, because Mr. Liddell identified it; he said where the post was; I identified the close proximity by that cut, because we had to pass that in going to the mill.

Q. And when you had seen it prevous to September, 1913, what was its depth?

A. Well, as I testified here on Saturday, I imagine possibly the cut may have been several feet deep years ago, but [500] it could not have been more than two feet at that time, and the sides were

(Testimony of Joseph Ralph.)

rounded. It is absolutely impossible for a man to go into exact details of a thing of that nature in passing over the ground, and then comes here and give the dimensions by inches, and to draw a contour map of it—no man could attempt to do so.

Q. How many times, to the best of your recollection, had you seen that cut or depression prior to September, 1913?

A. Well, the first time I saw the Copper Canyon property, I came out to make an examination, from London, in 1912; I was sent out specially from London by the heaviest stockholder of the Glasgow-Western. There had been a great deal of money spent there—

Mr. THATCHER.—I object to that; he asked when you saw it.

WITNESS.—Pardon me; I was going to the canyon to investigate, and my reasons for going to the canyon—

Mr. THATCHER.—I object to the testimony.

The COURT.—Read the question.

(The reporter reads the question.)

A. I could not say; may be six times, may be sixty.

Mr. SPRINGMEYER.—(Q.) When was the first time you saw it, would you say?

A. I won't swear whether I saw it in December, 1912, or after; but in 1912 my duty was to investigate every claim on the property.

Mr. THATCHER.—That is not the question, if the Court please. I object, and move to strike out the answer as not responsive.

(Testimony of Joseph Ralph.)

The COURT.—That may go out.

Mr. SPRINGMEYER.—(Q.) Were you in Copper Canyon in December, 1912? A. I was.

Q. Were you on the Salt Lake No. 3 claim at that time? A. Yes.

Q. Do you know whether you saw this cut or depression at that time?

A. I have said that is impossible when a person has seen— [501]

Q. Well, wait a moment, Mr. Ralph, that is not proper testimony. You don't know, then, whether or not you saw it in December, 1912? A. No.

Q. Do you know whether or not you saw it prior to September, 1913? A. I did.

Q. But you say you do not know the exact number of times? A. I do not.

Q. How did you happen to see it prior to September, 1913?

A. Irrespective of my first visit there, where I had to examine every pole on every claim in the Copper Canyon group, I had to report upon not only the economic conditions but the physical conditions, and my report was supposed to embrace every pole and every cut on that group of claims.

Q. Did you at that time make a careful examination of all those claims? A. I did.

Q. Did you at that time make a careful examination of the physical conditions on Salt Lake No. 3?

A. Well, I wrote a report of about thirty-two thousand words, with profuse maps, and I presume that I covered it fairly accurately.

(Testimony of Joseph Ralph.)

Q. You are positive that prior to September 1913, you had passed this cut and examined it, and that it was of a depth of between eighteen inches and two feet, is that the case? A. Yes, sir.

Mr. SPRINGMEYER.—That is all.

Recross-examination.

Mr. THATCHER.—(Q.) When was this report written? A. My report?

Q. Yes.

A. I submitted it on February 10th, 1913, I believe.

Q. February 10th, 1913?

A. February 10th, 1913.

Q. Now you began to put this cut and post together after the last [502] trial.

A. Beg pardon.

Q. You began to put this post which Mr. Liddell testified to, and this cut which you saw, together after the last trial? A. Yes, sir

Q. Well, did you during the trial?

A. Beg pardon.

Q. Did you during the trial? A. No, sir.

Q. Your side was plaintiff in that case, was it not?

A. Yes.

Q. Do you remember the testimony of the two Mr. Jorys and the testimony of Mr. Southey, and the testimony of Mr. Irving, all with reference to trying to locate a cut, a small cut up in the vicinity of the mill? A. Yes, sir.

Q. And that was where you were endeavoring in that last trial to locate your discovery cut, was it not?

(Testimony of Joseph Ralph.)

A. Yes, sir.

Q. Some place up in the vicinity of the mill?

A. Yes.

Q. And yet you didn't say anything about this cut you had seen to the Court at that time?

A. I was not asked.

Q. Sir? A. I was not asked.

Q. You hadn't been to it at that time?

A. I had not been asked, I say.

Q. Oh, you hadn't been asked? A. No, sir.

Q. You were the attorney in fact for the plaintiff in that case, were you not, at that time?

A. Yes.

Q. And you were directing your attorneys in the trial of the case, were you not?

A. Yes—pardon me, no, I was not directing my attorneys the last time unfortunately.

Q. The last time—this time you are?

A. You bet you.

Q. Did you consult with them?

A. Well, I think Mr. Platt—I passed up question after question here, and was ignored.

Q. Did you tell that to Mr. Platt the last time?

A. What? [503]

Q. About that cut?

A. I don't know whether I did or whether I did not; I told him a great many things in which he ignored me, until I retired to that room (indicating) with Mr. Gustin, and I used some very forcible language.

Q. Never mind that; did you tell Mr. Platt prior

(Testimony of Joseph Ralph.)

to the last trial, or any time during the last trial, concerning that cut?

A. I don't know that I ever mentioned it.

Q. You don't know that you ever mentioned it to Mr. Platt? A. No, I do not.

Q. You knew that Mr. Platt during that trial was endeavoring to locate a cut, did you not?

A. To be quite frank, I don't know to-day what was in the back of Mr. Platt's head, and I don't know his scheme of prosecution.

Q. Never mind the scheme that may have been in the back of his head.

A. It never got into mine.

Q. What was the general plan of the testimony presented to this court by Mr. Platt; wasn't it an endeavor to locate actually upon the ground a small cut up in the vicinity of the mill?

A. When these claims were jumped—

Q. Now you can answer that question, can you or can you not?

A. If I answer it I am going to answer it in my own way; you are not going to have any staccato from me to suit yourself, Mr. Thatcher.

The COURT.—Answer that yes of no, if you can, then if it needs an explanation you will be permitted to make one later. If you cannot answer it yes or no, say so.

A. I can't remember what I said to Mr. Platt, or what Mr. Platt said to me.

Mr. THATCHER.—Read the question to the witness, I don't believe he understands it.

(Testimony of Joseph Ralph.)

(The reporter reads the question.) [504]

A. I don't even know that, not to swear to it.

Q. Were you in court at all times during the presentation of plaintiff's case at the last trial?

A. Yes, and I might as well have been out of it.

The COURT.—That last may go out.

Mr. SPRINGMEYER.—Just answer the question, Mr. Ralph, if you can.

A. Yes, I was in court.

Q. You heard the testimony, did you not?

A. I suppose I did.

Q. Given in this court?

A. I suppose I must have heard it if I was in court.

Q. Is your hearing bad, Mr. Ralph?

A. My interest was very bad before the trial got half way through.

Q. Now you say you began to put this cut and post together by reason of some information that Mr. Liddell gave you? A. Yes.

Q. Did he testify at the last trial with reference to the post that you found on the ground?

A. You have the transcript here.

Q. I am asking you, you testified to it a few minutes ago.

A. Whether he testified to it or not on the stand I don't know, but either Mr. Liddell or the Jorys or Mr. Jurey testified to a stake.

Q. Being on the ground?

A. I believe so, I am not certain.

Q. One of those three testified with reference to

(Testimony of Joseph Ralph.)

a post being on the ground, did he?

A. I believe so, I am not sure but I believe so.

Q. And after that you began to ransack your memory for this cut, is that right, and you identified the two together?

A. No, sir; the first question I spoke about, or heard of any monument, was when Mr. Liddell mentioned it; and Mr. Liddell told [505] me, he said, "By George, I believe that is the original monument of Salt Lake No. 3," and I asked him what monument; he then explained the position; I said I had never seen it and never heard of it; it was upon that that I afterwards went to that place, and there I found it; and I tell you frankly, I don't care whether the post is there or whether it isn't.

Q. How many times did you see this between the time you came out there and took charge, and prior to September, 1913? A. I don't know.

Q. You said it might have been six times and might have been sixty? A. Yes.

Q. Well, was it six? A. I don't know.

Q. You don't know whether you saw it six times?

A. I could not go over twenty claims with hundreds of openings, and then come a year or two years afterwards and say how many times I had visited each opening, the hour of the day, and whether the birds were singing—things of that nature and detail—it would be a phychological impossibility.

Q. Could you say you saw it as many as six times?

A. I no doubt saw it more; six would be the minimum.

(Testimony of Joseph Ralph.)

Q. Six would be the minimum? A. Yes.

Q. Then if six would be the minimum, could you get any closer to the number of times?

A. No, I could not.

Q. That is the minimum number of times you had seen this cut prior to September, 1913? A. Yes.

Q. You don't remember particularly about that, how many times; you made a report of it, however; did you put it in your report?

A. I don't remember; I haven't my report here.

Q. Have you a copy of it? A. No.

Q. You said you were required to report every hole and cut upon the ground?

A. I didn't say that I was required. [506]

Q. If you did say that you would want that changed? A. Yes.

Q. I understood you to say you were required, and if the record so shows you would want that corrected? A. Yes.

Q. Well, did you show every hole and cut upon the ground in your report?

A. In my final report most probably not, or yet a half of the cuts; but in my original notes undoubtedly every declivity of every nature, and all the physical conditions would be indicated in my field book.

Q. Have you your field book with you?

A. No.

Q. Where is it? A. It is hard to say.

Q. Well, do you know?

A. No, I have no notations of that nature; I have

(Testimony of Joseph Ralph.)

not in my possession a single book of original notes, I don't think, that would go back a year; I don't carry my field-notes for the permanent files; if a thing has been transferred, and the data has been correlated as of interest, the rest I cut out.

Q. So are you of the opinion you have destroyed that field book or data?

A. I don't say I have destroyed it, but the chances are that I have.

Q. The chances are that you have; do you think you would keep those as long as a year?

A. I have no system of working in that respect whatever.

Q. Do you keep any field-notes at all?

A. No, sir, but very rarely. I will illustrate the way I keep my notes in a general sense: Since I have been here at this trial I have a loose leaf book; I make my notations, when the point of interest has been treated, and if there is nothing for further reference, that book is destroyed; I haven't two pages of notes in this book at the present time. When I have crossed a trial, I don't then want to burden my head with details; I only keep my mind fixed on general principles; if I lumbered up my mind with [507] any of those details I would probably be somewhere else.

Q. Well, that is a very good plan.

A. Yes, is that what you do?

Q. This post that Mr. Liddell testified to or told you about, that is the one which was found upon the ground, is it?

(Testimony of Joseph Ralph.)

A. There was a post found on the ground.

Q. A post was found on the ground? A. Yes.

Mr. THATCHER.—That is all.

Redirect Examination.

Mr. SPRINGMEYER.—(Q.) Is it a fact, Mr. Ralph, that prior to September, 1913, the monument and post were not on or near this dump, and that the first time you saw the monument and post was when you went there in December, 1913, with Mr. Jurey and Mr. Liddell?

A. There never has been a monument there.

Q. Well, the so-called monument.

A. All I can say is that when after the last trial Joe Jurey and myself visited that place there was an old four by four stake standing on a little cliff of rock, and running up against a higher one, and that stake is there to-day, or it was on the 13th of this month, when I put it up there again after its having fallen down; I don't know anything more about it.

Q. The first time you saw that was in December, 1913, is that correct or not?

The COURT.—Saw that post?

Mr. SPRINGMEYER.—Saw that post, and that so-called monument, was in December, 1913, the date of, or just prior to your making this affidavit?

A. Whether it was December or in January, I don't know; it was shortly after the trial.

Q. Well, just prior to your making this affidavit?

A. Yes, I never saw it before in my life. [508]

(Testimony of Joseph Ralph.)

Q. And you had not seen it there prior to September, 1913? A. I had not seen it, no, sir.

Q. That is correct, is it not? A. Yes.

Q. And you had not seen it prior to the trial about which counsel questioned you? A. No.

Mr. SPRINGMEYER.—That is all.

Recross-examination.

Mr. THATCHER.—(Q.) And where you saw it was at cut number 2 marked on Exhibit "A"; is that right—that is where you first saw it? A. Yes.

Q. And you first saw it in December, what date, can you tell me?

A. I didn't say December; the last trial was about the 13th or 15th of December; I saw it shortly afterwards; now whether I called at the canyon on my way back with Mr. Jurey and saw it, or whether I went to Salt Lake and came back again, I don't know; I may have seen it late in December, or it may have been early in January, but I would say that January had not elapsed before I had seen it.

Q. At any rate when you first saw that post it was sitting at the face of cut number 2 as marked on Exhibit "A," some time after the trial of the last case; is that right? A. Sitting at the face?

Q. No, at the mouth of the cut, or near the mouth.

A. No, it was standing on a small cliff of rock against another rock, so that the top of the monument would not come above the rock, or if so, very little.

Q. Would not come above the rock?

(Testimony of Joseph Ralph.)

A. Very little, if at all; it is standing there to-day; there is a rock there six or eight feet high, and about a foot or two feet from the bottom there is a little ledge, and as near as I remember it, that stake was standing on that ledge, and if the stake were exactly vertical [509] there would be a few inches, possibly, making it above the sky line; if there was an angle, it would be wholly against the rock.

Q. Suppose that is the cut number 2, was there a cleft of rock, and did it lay just about like that (illustrating) against the mouth of the cut?

A. Do you wish me to explain as the cut is now?

Q. Yes. A. As the cut is to-day?

Q. Well, as you saw it then how did it lay?

A. Well, the cut itself to-day has obliterated some of the old, but I would say—

Q. (Intg.) No, how did it lay after the last trial, the first time you ever saw that monument where was it with reference to that cut?

A. It was in the exact position as it is to-day, or was on the 13th of this month.

Q. It is? A. Yes, sir.

Q. Then did it on the 13th day of this month, taking the aisle there to represent the cut, and this to represent a little ledge near the mouth of the cut on the right-hand side, did the post set on a little ledge, and lay against the wall?

A. Approximately.

Q. Well, would that approximately describe the character and situation of the post at that time?

A. I would say fairly so.

(Testimony of Joseph Ralph.)

Mr. THATCHER.—That is all.

Mr. SPRINGMEYER.—That is all. [510]

**Testimony of Parker Liddell, for Defendant (Recalled).**

Direct Examination of Mr. PARKER LIDDELL (Resumed).

Mr. SPRINGMEYER.—(Q.) Now, Mr. Liddell, will you please state what you found, if anything, at point 2 on Plaintiffs' Exhibit "A" at least a foot and a half above the opening or depression?

Mr. THATCHER.—When did you find this? He has testified that he could not say whether the conditions were the same with reference to that cut; all they have shown is that the cut was there, and brought a witness here to testify that that cut was there, but they have not shown that the assays or samples that he took were in anywise from the same opening as it existed there when he first saw it, prior to September, 1913.

Mr. SPRINGMEYER.—The question was not directed toward any samples; the question previously was directed to the point whether he saw any mineral-bearing vein or mineral-bearing rock in place at this point.

The COURT.—You can ask if he saw any mineral-bearing rock in place at that point prior to September, 1913.

Mr. SPRINGMEYER.—We have shown that the depression was a foot and a half deep prior to Sep-

(Testimony of Parker Liddell.)

tember, 1913; now whatever he has seen since September, 1913, at a point a foot and a half above the depression, must necessarily be the same as it was prior, therefore I think I have a right to ask the question.

The COURT.—He can testify if it was something that must have been in existence prior to September, 1913, and exposed prior to that time.

Mr. SPRINGMEYER.—(Q.) Mr. Liddell, if the cut was at least a foot and a half deep prior to September, 1913, would this that you saw have been in the same condition at the time you saw it as prior to September, 1913?

Mr. THATCHER.—It seems to me it will simplify the matter [511] if he has taken since, an assay at any point from that cut, when he first saw it, or prior to September, 1913.

Mr. SPRINGMEYER.—I will say it is not as to assays or samples; he did not take any assays or samples there.

The COURT.—The purpose of this question is not to put in any samples?

Mr. SPRINGMEYER.—No, it is simply to show whether or not the appearance indicated a vein or mineral-bearing rock in place; it is not for the purpose of getting in any samples. If there was an outcrop there a foot and a half above this depression, it must still be there.

The COURT.—He can testify to it, if there is an outcrop on the surface.

Mr. SPRINGMEYER.—Answer the question.

(Testimony of Parker Liddell.)

A. At the time I was there, before September, 1913, there was an outcrop which showed a plane or a wall, which might be taken by any ordinary miner to be an indication of a vein or lode.

Q. What was its appearance as to having mineral or otherwise?

A. Well, it was simply a wall, showed a plane of movement; and what a person would suppose to have been a portion of the vein was filled in with surface soil and dirt that had been eroded, at that time, and washed in in the course of years.

Q. Now I understood you to say that you had taken samples, and had assays made from points which had been exposed since September, 1913, is that correct—on each of these three claims?

A. Well, some of the samples that I took were in portions of work which have been exposed since that time, and some that I took were at work in faces which had been exposed prior to that time.

Q. I simply want to get this in the record for the purpose of getting a ruling of the Court upon it, and taking an exception. Have you those assay returns from samples you have taken on [512] workings exposed since September, 1913?

A. Well, I have a memoranda of certificates showing those.

Q. Will you please state whether those are the assay certificates showing the values from those samples? (Hands paper to witness.)

Mr. THATCHER.—Q. These are from openings made subsequent to September, 1913?

(Testimony of Parker Liddell.)

A. This number one was from a four-foot vein in a cut—

Mr. THATCHER.—Object.

Mr. SPRINGMEYER.—Don't state where they are from—whether they are from samples taken by you from workings exposed since September, 1913.

The COURT.—And which were not exposed prior to that time.

Mr. SPRINGMEYER.—And which were not exposed prior to September, 1913.

A. The points where these samples were taken have been exposed, to the best of my knowledge, since that time.

Q. Do they correctly represent the assay values or returns from those samples?

A. They do. The samples were accurately taken, after picking down the face that was exposed at the time I took the samples; the picking off of the face was to insure that no agencies that would naturally concentrate values on that face would affect the sample; I wanted to get an accurate sample of the rock face exposed, so I first picked down the face, then I took an even and accurate sample across the width mentioned, in the surface, and those represent the correct results.

Mr. SPRINGMEYER.—We offer these in evidence.

Mr. THATCHER.—We object to them on the ground they are incompetent, irrelevant and immaterial, as being assays taken from exposures which did not exist prior to 1913, the time of the

(Testimony of Parker Liddell.)

location and initiation of the placer rights, and which were made since. [513]

Mr. SPRINGMEYER.—I would like to ask another question.

Q. The width of the sample appears on the assay certificate in each case, does it not?

A. The width of the sample is mentioned in the certificate.

The COURT.—(Q.) Were any of these samples taken from what was claimed by the original locator to have been the discovery of a vein?

A. I could not identify the positions at which these were taken as the positions which were claimed as the discovery points, the original discoveries.

Mr. THATCHER.—I think the certificates had better be marked for identification, before your Honor rules, and see what the developments are in the case. I can see some situations that might or might not arise, that perhaps would change my idea with reference to objecting; but at this time I ask that my objections be entered, and that they be not admitted.

The COURT.—I will rule on them now, if you wish. On the present showing, it seems to me they should all be excluded; but if it should appear that some of those assays were taken from a vein claimed as the lode on which the location was made, I might want to change my ruling.

Mr. SPRINGMEYER.—Our contention is, may it please your Honor, that they were taken from vein

(Testimony of Parker Liddell.)

material at points which have been exposed since September, 1913, but that this vein material outcropped at the surface, and was known prior to September, 1913, to the owners of the claims. Now I understood your Honor's ruling to be that any samples taken from points exposed since September, 1913, no matter whether at our pretended point of discovery or not, were not admissible?

The COURT.—That point has not been raised yet. I made the general ruling, in the absence of any distinction of that sort, that you cannot claim the benefit of a discovery which you made **[514]** subsequent to the placer locations; but if you discovered a vein before that time, and located that vein, and subsequent developments have shown that vein was more valuable than it appeared at first, that is another situation which has not been presented by the testimony.

Mr. SPRINGMEYER.—I would like to go further with reference to this, then. (Q.) Mr. Liddell, will you state whether you took any sample from a cut on Salt Lake No. 3, represented by your assay certificate numer one? A. I did.

Q. What point is that on Plaintiffs' Exhibit "A" or Defendant's Exhibit No. 5?

A. On Exhibit "A," I believe it is point number 2, and on Defendant's Exhibit No. 5, it is point number 14.

The COURT.—That is point 14 you are talking about? A. Yes, sir, it is the open cut.

Mr. SPRINGMEYER.—Point 14 on defendant's

(Testimony of Parker Liddell.)

map, or point 2 on plaintiffs' map. (Q.) Now state from what point you took the sample.

A. I took the sample standing up along what is the easterly face of the cut, and would be about two feet or two feet and a half probably, below the surface of the ground.

Q. The point at which you took the sample, then, was not exposed prior to September, 1913, is that correct?

A. Well, I would not say that it was not exposed; not to my knowledge, it was not.

Q. To the best of your knowledge, it was not exposed?

A. I would want to make the distinction that I simply don't know whether it had or had not been exposed, but I could not say of my own knowledge that it had been exposed.

Q. State whether there was a vein of mineral in place extending from the point at which you took this sample to the exposed parts of the opening, prior to September, 1913.

Mr. THATCHER.—Objected to on the ground no proper foundation [515] has been laid; it has not been shown by this witness that he knows that a vein was exposed and discovered prior to September, 1913.

The COURT.—Read the question.

(The reporter reads the question.)

The COURT.—I don't understand just what you mean by that question; is it a cropping on the surface, and the cropping extends to your excavation?

(Testimony of Parker Liddell.)

Mr. SPRINGMEYER.—I will withdraw that question.

Q. Is there any cropping in the surface of that cut, Mr. Liddell? A. Yes.

Q. Does the material from this cropping extend from the point at which you took the sample?

A. Yes, there is a cropping there that extends, I believe almost up to that point, but I don't believe that cropping represents a vein at which I took this sample.

Q. Does that vein at which you took the sample extend to the surface? A. Yes, sir, it does.

Q. Was the material from which you took this sample a part of any material which extended to the surface in the way of a vein or mineral in place, prior to September, 1913?

Mr. SPRINGMEYER.—He says he does not know what was in existence there prior to September, 1913; I am only asking him whether it extended to the surface prior to September, 1913. I have proved by Mr. Ralph that everything above that foot and a half depression was there prior to September, 1913?

The COURT.—Do you claim that was your discovery?

Mr. SPRINGMEYER.—No, may it please your Honor, we don't know the exact point of the discovery. The two Mr. Jorys say they made a discovery, and paced off the ground, but where the exact point of discovery is they are unable to say; they have not located it. [516]

(Testimony of Parker Liddell.)

The COURT.—You must claim some point as the discovery, do you not?

Mr. SPRINGMEYER.—We take the position that our discovery was at the position indicated by the notice of location, and by the certificate of location, as recorded with the district recorder and the county recorder.

The COURT.—That shows the center of the claim, does it not?

Mr. SPRINGMEYER.—Yes, that shows the center of the claim.

The COURT.—Do you claim your discovery is there?

Mr. SPRINGMEYER.—But with reference to this we say the exposed part was known to the owner of the claim prior to September, 1913.

The COURT.—Very well, you may proceed. I think I see your point now.

(By direction the reporter reads the question.)

A. It was.

Mr. SPRINGMEYER.—I now offer the assay certificate in evidence.

Mr. THATCHER.—Objected to on the ground it is incompetent, irrelevant and immaterial, the assay having been taken from an opening, cut and exposure of a vein made and discovered, and shown to have been discovered since the initiation of the title of the plaintiffs to the placer ground.

The COURT.—For the present I shall sustain the objection to that.

Mr. SPRINGMEYER.—We take an exception on

(Testimony of Parker Liddell.)

the grounds the evidence is material, relevant and proper. Will you mark that for identification.

(Assay certificate, sample No. 1, marked for identification.)

Q. Mr. Liddell, did you take any other samples than those the assay certificates of which are in evidence, at any point on Salt Lake No. 3?

A. I took another sample from the same cut, approximately [517] the same position.

The COURT.—Just a moment before we leave this. You say this sample one that is offered was taken from a cropping in the vicinity of this cut number 2, but you can't say whether it is the cropping which was exposed in cut number 2, or not; is that what I understand you to say?

A. Well, it was taken from a rock face that has been exposed, to the best of my knowledge, since that time; but if that cut had been deep enough, and had not been filled in, I could not say whether that face had been exposed prior to September or not.

Q. What I mean is, that sample must have been taken from vein matter, was it not, of some sort?

A. Yes.

Q. Was that the same vein which was exposed in cut number 2? A. Yes.

Mr. SPRINGMEYER.—(Q.) As I understand it, Mr. Liddell, that extended to the surface at a point above the foot and a half depression, is that correct?

A. I would say that was correct.

Q. The other sample you say you took from where?

(Testimony of Parker Liddell.)

A. I took it from a smaller width across approximately the same point.

Q. Across what width?

A. I believe it was about fifteen inches; it states on the certificate.

Q. Is that a correct assay return, assay value of the sample? A. It is.

Mr. SPRINGMEYER.—We offer that in evidence.

Mr. THATCHER.—The same objection.

The COURT.—Where did you say this one was taken?

A. That was from the same position of the other one, only it represented a less width.

The COURT.—It will be the same ruling.

Mr. SPRINGMEYER.—We take the same exception. **[518]**

(Sample No. 2, assay certificate, marked for identification.)

Q. Did you take any samples other than those the assay certificates of which have been admitted in evidence, from the Evening Star. A. I believe I did.

Q. At what point?

A. The Evening Star at the point marked "60" on defendant's map, Exhibit No. 5.

Q. What is the point on Plaintiffs' Exhibit "A"?

A. Point "20" on Exhibit "A."

Q. State whether or not that point was exposed since September, 1913, if you know?

A. Well, it must have been.

Q. At what point did you take it in the cut?

A. This particular sample represented about ten

(Testimony of Parker Liddell.)

inches on the roof or back of a crosscut that was driven from the bottom of the ten-foot shaft.

Mr. THATCHER.—Will you explain to the Court exactly what was there both before and since September, 1913?

A. You mean a description of the work?

Q. Yes, how it was before that, and how it was since, and where you took those assays.

Mr. SPRINGMEYER.—And what the condition of the vein is as to projecting out or not.

Mr. THATCHER.—He has not testified to any vein there yet.

A. Prior to September, 1913, according to my recollection, there was an open cut that ran easterly some twenty-two or three feet in length, and about five feet in width, and had a face of six or seven feet.

The COURT.—Give those dimensions again.

A. Twenty-three feet long, five feet wide, seven foot face. On my recent visit there, there had been a shaft sunk about ten feet in the bottom of this cut, and as I recollect it, the shaft was [519] toward the mouth of the cut; it may have been approximately in the center of the cut; the shaft was about four by six feet.

The COURT.—How deep was that shaft?

A. Approximately ten feet; from the bottom of the shaft a crosscut was run easterly about ten feet, and this sample that was taken was from about ten inches of quartz that was exposed right in the roof of that crosscut.

(Testimony of Parker Liddell.)

Mr. SPRINGMEYER.—(Q.) Did you find any vein there?

Mr. THATCHER.—Objected to on the ground it is incompetent, irrelevant and immaterial, an exposure and discovery, if any, made subsequent to September, 1913.

The COURT.—Is that the vein you claim to have originally discovered and located as the Evening Star claim?

Mr. SPRINGMEYER.—(Q.) Will you please state whether that is at the original discovery point marked "Discovery Point" on your plat?

A. I believe it is the point that was marked "Discovery Point" on the patent plat, but it is not the cut which was testified to as being the discovery point.

Q. Was there a vein at the surface at that point?

A. Well, I didn't examine the surface; I could not say that there was at that point, or over that point.

Q. All you examined was the lower part?

A. I just examined the point at which I took the assay sample.

Q. And you are not able to say whether the mineral bearing zone or vein continued to the surface, and was exposed prior to September, 1913?

A. Well, I would say that it was in an area which had been exposed prior to September, 1913, and which would ordinarily appeal to anybody as a mineral zone.

Mr. THATCHER.—I think that hardly answers the question, if the Court please; I don't think it is responsive.

(Testimony of Parker Liddell.)

The COURT.—It don't seem so to me. My idea is that you [520] can't take advantage of any discoveries you have made since the placer locations; and I don't believe there can be any dispute about that.

Mr. SPRINGMEYER.—No, your Honor, there is none.

The COURT.—If you made a discovery before the placer locations of course you have the benefit of it; and I think any proof to show a vein was discovered and located as your Salt Lake No. 3 vein, is admissible. I want to be very clear on those samples; if any of them are from a vein which you discovered and located, I want to know it.

(Discussion.)

Mr. THATCHER.—Mr. Springmeyer, may I ask you a question: Do you claim cut number 20 on Exhibit "A" as your discovery?

Mr. SPRINGMEYER.—No, the discovery is here, cut 69 on defendant's map; it is number 24 on yours, but we say that was subsequently opened.

The COURT.—You claim "24" as your original discovery?

Mr. SPRINGMEYER.—Yes, your Honor.

The COURT.—That is on the Evening Star?

Mr. SPRINGMEYER.—Yes.

The COURT.—You discovered a vein at that time, and now you put in proof to show that that was a valuable vein?

Mr. SPRINGMEYER.—The point from which this sample was taken was still another point, point

(Testimony of Parker Liddell.)

20; we have shown there was a cut at point 20 in 1912. Let me bring that out more clearly from Mr. Liddell.

Q. Mr. Liddell, state whether or not there was any work at point 20 prior to September, 1913?

Mr. THATCHER.—He has already testified that there was.

Mr. SPRINGMEYER.—Well, I want to make it clear to the Court [521] and jury; it don't seem to be plain.

A. At point 20 on Exhibit "A" there was an open cut running easterly through a heavily iron-stained salicious material.

Q. What were the dimensions of that cut prior to September, 1913?

A. About twenty-three feet long, five feet wide, and about seven foot face.

The COURT.—Will you point to it?

Mr. SPRINGMEYER.—Point "60" on defendant's map and point "20" on plaintiffs' map.

Q. How deep did you say the cut was?

A. About seven feet at the face.

Q. State whether or not there was any vein or mineral-bearing rock in place exposed in that cut prior to September, 1913?

Mr. THATCHER.—He has already testified to that; he testified that there was none.

Mr. SPRINGMEYER.—I don't know whether he has or not; I am inclined to think you are mistaken, General.

WITNESS.—I did not make a careful examination of the cut at that time, but from the general cut

(Testimony of Parker Liddell.)

I would say it was a point that had been subject to such natural agencies that a person might be warranted in expecting to find mineral there.

Q. Well, do I understand you to say that there was no vein exposed in the cut itself prior to September, 1913?

A. I didn't examine it to ascertain whether there was or was not a vein exposed.

Mr. SPRINGMEYER.—On that showing we offer this assay certificate in evidence.

Mr. THATCHER.—We make the same objection, if the Court please.

The COURT.—(Q.) You say you cannot say there was any vein exposed there or not? [522]

A. I could say this, that subsequent work has shown—

Q. That is not the question. Subsequent work might have shown hundred dollar assays down there, and may yet, you cannot tell; the question is whether there was a vein exposed there in the workings prior to the location of the placers.

A. I was going to say the subsequent work shows there must have been a vein exposed by that work that was originally done; the sinking of the shaft was from the bottom of the cut, and through the shaft there is a vein that must have been exposed at the time the cut was run.

Mr. ELLIS.—(Q.) And prior to the placer locations? A. And prior to September, 1913.

The COURT.—(Q.) Why do you say it must have been exposed?

(Testimony of Parker Liddell.)

A. Because the cut could not have been dug at all unless it had exposed the vein; but I did not examine it prior to that time to see whether there was or was not a vein exposed by the cut.

Mr. DEITREICH.—(JUROR.) Was that cut through wash?

A. No, the cut was in the ground; and in digging out the cut you would expose the vein; through the shaft there is a vein, and I naturally think it must have been exposed.

Mr. ELLIS.—(Q.) State what the indications were to indicate that to your mind.

A. The indications were a vein still running diagonally across the shaft, which had come up to that point which was formerly the floor of that cut but the floor of the cut not being there, it would be impossible to take an assay from the point, or any point on that vein, which was actually exposed at the time the cut alone was there; unless, possibly, right along the ridge of the surface, and that would not be a good place to take a sample of any vein.

The COURT.—Is there any testimony in the case as to who made that cut? [523]

Mr. THATCHER.—Yes, sir; Mr. Jurey testified he made that cut as annual labor for the year 1912; that is his testimony on cross-examination.

The COURT.—I will sustain the objection to the certificate at the present time.

Mr. SPRINGMEYER.—We take an exception on the same grounds.

(Testimony of Parker Liddell.)

(Assay certificate, sample 8, marked for identification.)

Q. Did you take any samples from any workings exposed on the Midas claim since September, 1913?

A. This is number 4, and this is number 5; number 5 was taken directly over number 4; those two were taken on Salt Lake No. 3.

Q. Did you take any other samples from workings exposed on Salt Lake No. 3, since September, 1913?

A. Yes, I took two samples from a shaft along the road leading to the mill, at point "9" on Defendant's Exhibit No. 5, and at point "1" on Plaintiffs' Exhibit "A."

Mr. THATCHER.—(Q.) From the shaft you took them? A. Yes.

Mr. SPRINGMEYER.—(Q.) Was there any vein or mineral-bearing rock in place exposed at that point prior to September, 1913, if you know?

Mr. THATCHER.—He has already testified with reference to the point, and its character, and other things; I think we are going over the same ground.

Mr. SPRINGMEYER.—It may be that a vein was exposed in several places prior to September, 1913.

The COURT.—Well, he can answer that question. Was it exposed prior to September, 1913?

A. Yes, it was.

Mr. SPRINGMEYER.—(Q.) In what way?

A. By the grading for the road, cut out a portion of the vein so that in the bank of the road you could see the vein. [524]

Q. Now, will you state at what point on the vein

(Testimony of Parker Liddell.)

the sample was taken.

A. The sample was taken at the bottom of a ten-foot shaft, or close to the bottom.

Q. State whether or not the vein runs to the surface, and to the point that was exposed in the road prior to September, 1913.

A. Yes, the vein comes to the surface, and to the road grade.

Q. As it was exposed prior to September, 1913?

A. Yes.

Q. Which assay certificate is that?

A. Number 4.

Q. Over what width did you take that sample?

A. I took that over 36 inches of the vein at the bottom of the shaft.

Q. State how you took the sample.

A. I picked down a certain width, running from one wall to the other of the vein, and then chipped off with a pick an amount that I thought would represent the average of the rock across that width.

Q. Does that assay certificate properly and correctly represent the assay returns or assay value of the sample you took? A. It does.

Mr. SPRINGMEYER.—We offer it in evidence.

Mr. THATCHER.—Same objection.

The COURT.—The same ruling for the present.

Mr. SPRINGMEYER.—We take the same exception.

(Assay certificate, sample 4, marked for identification.)

Mr. SPRINGMEYER.—It appears that this was

(Testimony of Parker Liddell.)

exposed prior to September, 1913.

The COURT.—I have that down; some of them will very likely be admitted; I will go over them with more care later.

Mr. THATCHER.—It is possible I may withdraw some of my objections, but I want to be sure we get them identified.

Mr. SPRINGMEYER.—(Q.) Did you take any other samples from [525] Salt Lake No. 3 claim?

A. I took one other; just took out a chunk of rock of what was the northerly side of this shaft.

Q. At point number "9" on defendant's map, Exhibit No. 5, and point "1" on Plaintiffs' Map Exhibit "A"? A. Yes.

Q. At what part of the shaft did you take that sample?

A. Well, it was about four feet above the bottom of the shaft.

Q. How did you take the sample?

A. I just knocked out a chunk of the rock that was exposed at that point.

Q. Did you take it from any mineralized part?

A. Well, the rock had a greenish cast to it, and I thought possibly there was a little copper in it, so I just took a little chunk of it, principally with reference to see what the stain might be.

Q. State whether or not you found any mineral-bearing rock in place there, or mineral-bearing vein, which extended to the surface, that was exposed prior to September, 1913.

The COURT.—Isn't this the same shaft that sam-

(Testimony of Parker Liddell.)

ple number 4 was taken from?

Mr. SPRINGMEYER.—Yes.

WITNESS.—It was hanging-wall rock right outside of the vein, what I considered at that time to be hanging-wall rock.

Mr. SPRINGMEYER.—We offer that in evidence.

Mr. THATCHER.—Same objection.

The COURT.—The same ruling.

Mr. SPRINGMEYER.—We ask for the same exception.

(Assay certificate, sample 5, marked for identification.)

(RECESS FOR FIVE MINUTES. AFTER RECESS.)

Mr. SPRINGMEYER.—(Q.) Did you ever make an examination of the center line of Salt Lake No. 3 claim, from north to south?

A. I have been over the ground which would correspond to the length of the center line of the Salt Lake No. 3. [526]

Q. State what you found there, if anything.

A. For the greater portion of the line, from the north end of the claim it runs directly down the gulch, and in doing so at a point just southerly from the location monument, there is a ridge that comes down there, extends pretty well into the gulch; and I am pretty fairly certain that at that point the rock crops; there is a wagon road running from the office, which is the building just northwest of the point given as the location discovery point, down to what is

(Testimony of Parker Liddell.)

now the boarding-house and as you leave the office, you go up a distinct little rise, and on that rise I am quite certain that there is a rock cropping at that point.

The COURT.—(Q.) That is, you are certain it crops on the ridge? A. Yes.

Q. What would be the course of that cropping?

A. Well, it would be almost easterly and westerly—east and west.

Mr. SPRINGMEYER.—(Q.) Did you find anything else along the center line, or near it?

A. Well, going southerly the line runs over a ridge, but I could not state as to actually having found, or being certain if there were any rock croppings although the general contour of the formation would lead me to believe that the whole formation was actually in place.

Q. Is that all? A. That is all.

The COURT.—(Q.) What do you mean by the whole formation being in place?

A. Well, I mean that the contour of the hill is such as to represent actual formation; that is, that you may not see the cropping of any rock, but if you would scrape away the surface dirt, you would be right on the formation that composes the hill at that particular point.

Q. In other words, if you would scrape off the earth you would get to the bedrock? [527]

A. You would get to the bedrock that forms that hill, yes; I don't think any rocks or boulders that you might see at that point would have been transported

(Testimony of Parker Liddell.)

any considerable distance; that is, the nature of the weathering and the natural erosion of that hill, would be such that all the dirt and rock would have come almost immediately from the territory surrounding the point at which you find it.

Mr. SPRINGMEYER.—(Q.) You would say, then, along the center line that there is solid rock, I understand, although not exposed at the surface at all places? A. Yes, sir.

Q. Do you know the Eagle Adit? A. Yes.

Q. State where it is situated.

A. The mouth of the tunnel is situated on Salt Lake No. 2, and it runs easterly through the Salt Lake No. 2 and Eagle lodes.

Q. State how far the mouth of the Eagle adit is from the eastern side line of the Midas claim, if you know.

A. Well, I could not give the exact distance; I should judge it is approximately 450 feet.

Q. Do you know the Farrin adit? A. Yes.

Q. Where is that situated?

A. It runs easterly through Salt Lake No. 4, and the claims directly east of it.

Q. How far from the northern end line of the Salt Lake No. 3 is the mouth of the adit?

A. The mouth of the adit is, I should judge, about 350 feet from the northeast corner of the Salt Lake No. 3.

Q. Do you know what the prevailing wages for miners in Copper Canyon District were during the years 1912 and 1913?

(Testimony of Parker Liddell.)

A. They were reported to be four dollars, I believe.

Q. From what point are the supplies used in Copper Canyon shipped, if you know?

A. Well, I know of them hauling supplies from [528] Battle Mountain.

Q. Such materials as lumber and powder and fuse, and all mining supplies are shipped from Battle Mountain?

A. Yes, I think practically all the supplies are shipped out from Battle Mountain.

Q. How far distant is Battle Mountain?

A. I think it is about eighteen or twenty miles by the road.

Q. State approximately what is the reasonable value of the shaft sunk on the Evening Star claim in 1913, which you have testified is 33 feet on the vertical and 20 feet on the incline?

A. The approximate value?

Q. Yes—well, would you say it is worth over a hundred dollars?

Mr. THATCHER.—I will admit it is worth over a hundred dollars.

WITNESS.—Easily I should say it is worth over a hundred dollars.

Mr. SPRINGMEYER.—(Q.) Would you say it is worth three hundred dollars?

A. It ought to be worth that much.

Q. State whether or not the shaft sunk on the Midas claim prior to September, 1913, in the northwest corner, is worth a hundred dollars.

(Testimony of Parker Liddell.)

A. Well, it might easily be worth a hundred dollars.

Q. And how about the shaft sunk on the Salt Lake No. 3 claim in the southwest corner prior to September, 1913; would you say that was reasonably worth at least a hundred dollars?

A. Well, I don't know whether that is worth a hundred dollars or not; it might be under some circumstances, and again it might not be.

Q. Well, if there was a windlass used in making that shaft, and some timbers, and some power was used in blasting, would you say that it might reasonably be worth one hundred dollars?

A. Well, the amount of actual work, I would not say so, but if [529] the necessary labor and trouble of getting the material on there, and other matters incident to arranging for that work, and starting the work—why, it might possibly be worth a hundred dollars.

Q. On the mineral showing exposed on each of these three claims prior to September, 1913, state whether or not, in your opinion, a reasonably prudent man would be justified in locating each of these three lode claims?

A. Well, I think in view of the fact that—

Mr. THATCHER.—You can answer that yes or no. A. Well, I think he would, yes.

Mr. SPRINGMEYER.—You may cross-examine.

(The Court admonishes the jury, and at 12 o'clock a recess is taken until 1:30 P. M.) [530]

(Testimony of Parker Liddell.)

AFTER RECESS—1:30 P. M.

(All parties present.)

Cross-examination of Mr. PARKER LIDDELL.

Mr. THATCHER.—(Q.) Mr. Liddell, have you the notes that you took when making this patent survey? A. I have the original notes.

Q. Will you give me your book, and point out the pages of your field-notes?

A. They are scattered over a number of pages.

Q. Will you, during the recess which we will take this afternoon, number the pages, and let me have the numbers, of the field-notes of this survey.

A. I will try to hunt them all up.

Mr. SPRINGMEYER.—We object to that on the ground it is not proper cross-examination. He testified that the notes he had used in the field survey were on the plats that are in evidence; those are the notes that I examined him regarding; he misunderstood me in the first place, and referred to those notes.

Mr. THATCHER.—I am only referring to so much of his notes as refer to the patent survey; that is all I want to look at, and that is why I want him to designate those pages in his field-notes.

The COURT.—He can do that.

Mr. THATCHER.—Will you do that at the recess? A. Certainly.

Q. You said you made this survey for patent commencing some time in June, and completing the survey about the 12th of August, 1913? A. Yes.

Q. You commenced as I understand you, with the

(Testimony of Parker Liddell.)

Midas claim? A. I beg pardon.

Q. In making this survey for patent you commenced with the Midas claim? [531]

A. Well, I first determined the meridian, I believe, from the southeast corner of the Midas; that is, I first connected the meridian with the claims.

Q. Which claim did you start in on first, which line did you run first?

A. I ran the east boundary line of the Midas and the Evening Star.

Q. That is the common boundary between the Midas and Evening Star side line?

A. Did I say Evening Star? The Midas and Salt Lake No. 3; that is, I started at the southeast corner of the Midas, and ran a line northerly along the eastern boundary of the Midas and Salt Lake No. 3.

Q. You mean this line? (Indicating on map.)

A. Yes.

Q. When you surveyed the Salt Lake No. 3, and your observations there, how many monuments did you find on Salt Lake No. 3?

A. I found the four corner monuments, each side center, or east side line corner, and I believe I was at the west side line corner, but I could not be positive about that.

Q. You could not be positive about that?

A. No.

Q. Did you find any other monuments on the ground?

The COURT.—On the Salt Lake No. 3 you found the four corners?

(Testimony of Parker Liddell.)

Mr. THATCHER.—The four corners, the east side center, and you ran from about the west side, center?

A. I believe it was there, but I could not state positively.

Q. You could not state positively that you found it. A. No.

Q. Did you find any other monuments on that claim?

A. There was the post I have heretofore referred to, and which I thought at the time might have been the discovery post.

Q. Never mind what you thought, just tell me what you found.

A. Well, I found another post on the claim.

Q. Another post, where did you find that? [532]

A. It was easterly from the office building, approximately two hundred feet.

Q. Easterly from the office building, approximately two hundred feet; will you designate upon Exhibit "A" the office building.

A. The point marked "C" on Exhibit "A."

Q. The point marked "C" on Exhibit "A" is the office building; about two hundred feet easterly from that is where you found this monument?

A. This post.

Q. Was it standing?

A. As I remember, it was leaning against a ledge of rock.

Q. It was leaning against a ledge of rock?

A. Yes, sir.

(Testimony of Parker Liddell.)

Q. That was when you were making the survey, as I understand you? A. Yes.

Q. For patent, prior to September, 1913?

A. Yes.

Q. When did you first mention to any one the finding of the monument or post?

A. Well, I think I first mentioned it to Mr. Jurey at the time.

Q. Which Mr. Jurey, Joseph Jurey?

A. Mr. Joseph Jurey, yes.

Q. Not either of the Jorys, but Joseph Jurey?

A. Joseph Jurey, yes.

Q. When did you first mention it to Mr. Ralph?

A. If my recollection is correct, it was at the time, or it was in December of 1913.

Q. Was it during the trial of this case?

A. Well, I don't recollect whether it was during the trial or whether it was after the trial, but I think I spoke to him about it in December, 1913.

Q. Do you remember whether or not you told him at the last trial or during the last trial, about finding this monument?

A. Well, I would not be certain, no.

Q. Did you say anything to this Court at the last trial of this [533] case about finding that monument?

A. I cannot recall having said anything, no.

Q. Was this post, when you found it on the ground, near a cut?

A. As I recollect, it was at the southerly end of what appeared to be an old trench.

(Testimony of Parker Liddell.)

Q. It was at the southerly end of what appeared to be an old trench—in what direction did that trench run—northerly and southerly, generally?

A. It was northerly and southerly.

Q. And this was at the southerly end of it, that is, where you saw it the first time?

A. That is my recollection of it, yes.

Q. You didn't mention that on the former trial of this case, did you?

A. I don't recollect of having mentioned it, no.

Q. You didn't mention this cut or small trench on the former trial of this case, did you?

A. No, I don't think I did; not that I remember.

Q. You didn't put it on your map that you made for the other trial of this case, did you?

A. The map will show that; I don't remember.

Q. I call your attention to Exhibit No. 8; it is marked No. 10 on the back, and No. 8 here; did you make that map? A. Yes.

Q. Do you remember whether that is the map which was introduced in evidence at the last trial, on behalf of plaintiffs?

A. It was introduced as evidence in the trial here in December, 1913.

Q. In December, between the same parties, or their predecessors in interest? A. Yes.

Q. Will you look at that map, and I call your attention to Salt Lake No. 3; that monument or that cut? A. I did not.

Q. You did not? A. No, sir.

Q. Did you show that cut on your patent plat?

(Testimony of Parker Liddell.)

[534] A. I don't think I did, no.

Q. You did not, as a matter of fact?

A. No, I don't think it is on there.

Q. Will you walk over to the patent plat and see whether it is on there or not? (Witness goes to map.)

A. It is not shown on the map.

Q. It is not shown on that patent plat?

A. No, sir.

Q. Are you not required under the rules of the Land Department, and as a deputy mineral surveyor, to place all excavations upon your patent survey, and show them?

A. Yes, sir, we are supposed to show all the workings and excavations and improvements.

Q. On the ground? A. Yes, sir.

Mr. SPRINGMEYER.—I would like the reporter to read the previous question. (The reporter reads the question.)

Mr. SPRINGMEYER.—We object to the question on the ground it is not based upon facts in evidence, or upon the rules of the Land Department.

The COURT.—Well, the rule of the Land Department, and the law itself is the best evidence.

Mr. THATCHER.—He has already said that he is required to do so.

WITNESS.—No, I didn't say "required"; I said you are "supposed to."

Q. Supposed to? A. Yes.

Mr. SPRINGMEYER.—We object to the question on the ground the rule is the best evidence, and it is

(Testimony of Parker Liddell.)

not proper cross-examination.

The COURT.—Very well; it may go out.

Mr. THATCHER.—I call the Court's attention to the United States Mining Laws and Regulations, date of November 6, 1912, [535] page 58, subdivision 158.

Q. Did you find any other monument in the northerly end of the claim?

A. As I recall it, there was a monument near the northwest corner of the claim, I could not state positively that it was exactly within the boundary of this claim, but it was close to the northwest corner of the claim.

Q. Did you find an old monument?

A. This as I recall it, was a stone monument with a post in it.

Q. Where was it?

A. Forty or fifty feet from the northwest corner monument of the Salt Lake No. 3, in an easterly direction from the northwest corner of the Salt Lake No. 3.

Q. And very close to the north end line, is that right?

A. Yes, sir, I think it was.

Q. You testified on the former trial of this case, did you not, Mr. Liddell? A. I did.

Q. Did you at the former trial, of this case, in December, before this Court, entitled William Lamont, as Liquidator versus Guy Davis et al., testify as follows: "Q. Then as I understand it, while you were engaged in the survey, and before you com-

(Testimony of Parker Liddell.)

pleted it— A. (Intg.) Oh, I beg your pardon, yes, at the time I speak of there was one moument that was a monument of another claim. Q. Do you remember about when you discovered that monument? A. It was in the early part of August. Q. Of this year? A. 1913. Q. And where was it situated within the Salt Lake number 3? A. Well, the monument to which I refer was a monument of an old location which is very close to the north end line, and easterly from the Northwest corner, approximately sixty feet; it was an old location. Q. It was an old location? A. Yes; that is, it was the corner of an old lode location. Q. Then the monument you discovered was a corner of an old lode *lode* location? A. Yes. [536] Q. Now did you discover any other monuments, or recent monuments, while you were upon the ground engaged in that survey? A. No. Q. Then you have described all of the monuments that you discovered before you completed your survey upon the Salt Lake number 3? A. Yes." Did you so testify?

A. I may have.

Q. Do you remember whether you did or not?

A. I think probably I did.

Q. Don't you know that you did so testify?

A. Yes, I suppose I did if it is in the record there.

Q. You are only willing to suppose so if it is in the record; can't you say whether you did or not, Mr. Liddell? I don't want to have to put another witness on to prove this record.

(Testimony of Parker Liddell.)

Mr. SPRINGMEYER.—Oh, we will admit that he did.

WITNESS.—I will admit the record; I can't say I have a direct recollection of having testified to that fact, but I suppose that I did testify to it.

Q. Didn't you testify on the former trial that exhibit No. 8, to which I have called your attention—your map—showed all of the improvemnts and excavations on the ground at the time you made the survey? A. I may have.

Q. I call your attention to page 37 of the record of the former trial (Reads:) "Mr. THATCHER: (Q.) Does this map show all of the workings and excavations upon the Salt Lake Number 3, the Midas, and the Evening Star, so far as you have been able to ascertain? Referring to Plaintiff's Exhibit No. 8. A. I think it does, yes." Did you so testify?

A. Very likely.

Q. Did you ever find a location monument of the Salt Lake No. 3?

A. I never found any monument I could identify as such.

Q. Then when you said that you assumed the monument which you found to be the Salt Lake No. 3, you don't want the jury to understand [537] that you identify that monument as Salt Lake No. 3?

A. To which monument do you refer, General?

Q. This monument that you found over two hundred feet easterly of the office.

A. I never assumed that to be any particular monument at all; there was a monument there; that

(Testimony of Parker Liddell.)

is, there was the post there set in a few rocks; I was unable to identify it, and I didn't assume it to be any more than it was—a post.

Q. Did you in your survey of improvements made to the Surveyor General of the United States, mention this cut number 2, or this small cut which you have testified that you found there while making that survey? A. No. I don't think I did.

Q. You didn't mention it in your certificate of improvements? A. I don't think so.

Q. Did you mention it in your papers or memoranda which you filed with the Land Department, or the surveyor-general, in the making of this application for patent?

A. Not that I know of.

Q. Not that you know of? A. No, sir.

Q. Now, Mr. Liddell, you located the discovery monument of the Salt Lake No. 3 lode, or the discovery point, we will call it; there is no monument there, I understand you?

A. Not that I put there.

Q. Not that you put there; how did you locate that point?

A. I took the position of the point from reference to the copy of the location notice of the Salt Lake No. 3 claim.

Q. The location notice of the Salt Lake No. 3 claims 255 feet northerly from the discovery monument, does it not? A. Yes.

Q. And 1245 feet southerly, I believe, is that right? A. I think that is correct, yes.

(Testimony of Parker Liddell.)

Q. These two monuments were up, I understand you, you found them on the ground? A. Yes.

Q. The northeast and the northwest corner.

A. Yes, sir. [538]

Q. It was no trouble then, taking a point in the middle of the claim, to locate the discovery point or a point to be called discovery, was it; that is how you did it, wasn't it?

A. Why, I assumed that point—I never placed a point in the Middle of the claim; I placed a point on the map to represent the point given as the discovery point in the copy of the location notice.

Q. Have you ever seen a monument there?

A. No.

Q. Have you been there? A. Yes.

Q. And there wasn't anything there when you made the survey?

A. Not at the point represented on the map.

Q. You testified as to the character of the ground in and around this point we will call the location monument; what was the character of the ground in and around there?

A. For a few feet immediately around there, it is soil, mostly that alluvial wash.

Q. Wash is it?

A. That is what is popularly termed wash, to a certain extent.

Q. Isn't it a fact that travelling down the center line of that claim from one end to the other, it is covered with wash throughout.

A. No, I don't think that is a fact.

(Testimony of Parker Liddell.)

Q. Where would you say that is not a fact?

A. I would say that is not a fact at a point southerly from the point marked "Location Discovery" from twenty to forty feet.

Q. From twenty to forty feet? A. Yes.

Q. This way? (Indicating on map.)

A. Southerly, yes.

Q. And what was there?

A. There is a ridge comes down into the main gulch at that point, and there is a road runs over the ridge right there, and there is hard rock at the point of which I speak.

Q. Hard rock? A. Yes.

Q. Is it in place? A. I think it is. [539]

Q. You think it is. A. I think so.

Q. You think it crops there?

A. I think so.

Q. What way does it run.

A. The ridge runs practically east and west.

Q. Practically east and west across the claim, as I have indicated?

A. Yes, that is the general direction.

Q. That is the general direction of it. I call your attention to a point marked "28" on Plaintiffs' Exhibit "A," the same point on Mr. Tibby's map, and ask you what those points are?

Mr. SPRINGMEYER.—What is the point on Mr. Tibby's map?

Mr. THATCHER.—It is not marked.

WITNESS.—Point "28" and the point corresponding on Mr. Tibby's map, is "Shaft."

(Testimony of Parker Liddell.)

Mr. THATCHER.—(Q.) On your patent plat how is that marked?

A. It is marked "Discovery shaft."

Q. How deep is that shaft?

A. Well, I should judge it was about ten feet.

Q. Is it in the wash, as near as you could ascertain, Mr. Liddell?

A. I don't know whether it is all in the wash or not.

Q. You don't know? A. No.

Q. That is the point marked "Discovery shaft" on your patent plat? A. Yes, sir.

Q. What value did you give to that in your certificate or improvements, do you recollect?

A. I don't recollect.

Q. What dimensions did you give to it on your patent plat, or your notes?

A. Well, I would not be sure.

Q. Do you recollect whether or not it was about 140 cubic feet.

A. I didn't give the quantity or volume of it.

Q. I call your attention to Defendant's Exhibit No. 3, and ask you if you can locate that discovery shaft upon that picture? A. Yes.

Q. Will you kindly draw a circle around it. [540]

A. The one covered by this outhouse. (Draws circle with red pencil around point indicated.)

Q. Run a line over here, and put "D. S." (Witness marks as directed.)

Q. This other small shaft shown northerly from the same point on Mr. Tibby's map here is the same

(Testimony of Parker Liddell.)

character of an opening and covered by an outhouse, is it not?

A. Yes, it was a small shaft covered by an outhouse.

Q. And you gave those improvements as one hundred dollars each in the certificate you made to the surveyor-general, did you not? A. I may have.

Q. Do you remember whether you did or not?

A. No, I don't remember.

Q. Did you put a well on there—there was a well on the ground, was there not? A. Yes.

Q. And did you put that on your patent plat?

A. I think so.

Q. What valuation did you give to that in your certificate of improvements to the land office?

A. I don't remember.

Q. You actually put it in though, did you not, and gave it a valuation? A. I think I did.

Q. And claimed it as part of the five hundred dollars' worth of work necessary for patent—showed it for that purpose?

A. Well, I think it went in with the improvements.

Q. Went in with the improvements for the purpose of patent. Are you familiar with the mining laws and regulations of the United States, the edition of Sept. 6th, 1912, or those in effect at that time, bearing on deputy mineral surveyors?

A. Fairly well.

Q. And applications for patent—surveys for patent. A. Yes.

Q. I call your attention to page 58 of the United

(Testimony of Parker Liddell.)

States Mining Laws and Regulations, subdivision 158, is that one of the rules [541] and regulations with reference to surveying a claim for patent?

A. I think it is, yes.

Mr. THATCHER.—We offer it in evidence, if the Court please.

Mr. SPRINGMEYER.—No objection.

Mr. THATCHER.—I would like to read it into the record. (Reads:) "158. All mining and other improvements claimed will be located by courses and distances from corners of the survey or from points on the center or side lines, specifying with particularity and detail the dimensions and character of each, and the improvements upon each location should be numbered consecutively, the point of discovery being always number 1. Improvements made by a former locator who has abandoned his claim, cannot be included in the estimate, but should be described and located in the notes and plat."

Q. When you first went on this claim what improvements were on it?

A. Salt Lake No. 3 claim?

Q. Salt Lake No. 3.

A. There was the cuts for the mill, the mill road, the two small shafts toward the northwest corner.

Q. Two small shafts toward the northwest corner?

A. The well or circular shaft near the south center portion of the claim; a small shaft near the southwest corner; and then there was also this small trench which is easterly from the discovery point 150 feet.

Q. A small what? A. Well, this small trench.

(Testimony of Parker Liddell.)

Q. The small trench which you call number 2?

A. Yes, it is located there—I believe now is called number 2 on exhibit "A."

The COURT.—Q. You spoke about the well and the circular shaft, is that the same?

A. The same thing.

Mr. DETREICH (Juror).—Any water in that well?

A. I think not; I never went down to the bottom of it. I never [542] was in the well.

Mr. THATCHER.—(Q.) When you testified on the former trial of this case, and you were asked to enumerate the improvements on the ground, you didn't mention this small cut which you now mention as being easterly from the discovery monument, did you? A. Probably not.

Q. Now I understand you to say that southerly from this point, about twenty to forty feet, is a cropping of hard rock?

A. I think the rock is in place.

Q. You think the rock is in place at that point?

A. Yes.

Q. You didn't call that a cropping of a vein, did you? A. I never alluded to it as that; no.

Q. At any point along the center line of the claim have you ever seen a vein or lode of mineral-bearing rock in place?

A. I have not seen one that I could state definitely was on the center line, I think it was mineral-bearing.

Q. Isn't it a fact that along this line, as a general

(Testimony of Parker Liddell.)

thing, the whole of the surface is covered with a wash?

A. No, there is a ridge coming down into the claim which I have just spoken of, near the discovery point; there is also a ridge coming down into the claim, towards the south end of the claim, which is covered simply by brush and soil.

Q. A ridge down near the southern end of the claim? A. Yes.

Q. Covered by brush and soil? A. Yes.

Q. But it is covered with brush and soil?

A. Well, not all points are covered with brush and soil.

Q. Is the formation disclosed at any point along there?

A. Well, with reference to the lode line I could not be positive, but it is my impression that it is, yes.

Q. It is your impression that it is?

A. Yes, that is my impression. [543]

Q. Will you point out to the jury cut number 2 on the picture, Defendant's Exhibit No. 3.

A. Cut number 2 (indicating on picture).

Q. Just run a line over there, and call that cut number 2—just number 2. (Witness marks the point on the exhibit, as directed.)

Q. Can you locate point number 1 on that picture, Defendant's Exhibit Number 3?

A. It is this point shown here (indicating).

Q. Put a circle round it, and mark it number 1. (Witness indicates point as directed.)

Q. Can you point out any place on this picture,

(Testimony of Parker Liddell.)

Exhibit No. 3, this cropping that crosses the gulch below the location monuments?

A. No, you can't see it; the ridge comes down right in here; passes just north of the upper bunk-house.

Q. North of the northerly bunk-house; can you locate the northeast corner of the claim, of Salt Lake No. 3?

JUROR.—What year was the mill built?

A. I am pretty certain it was 1912, I think it was 1912.

Mr. SPRINGMEYER.—I think Mr. Joseph Jurey so testified.

A. I don't see it, I believe it should be in the picture here, but it is a little hard to see it.

Mr. SPRINGMEYER.—Would it help you to examine one of the other maps?

A. It is in close to this vicinity, but I can't actually see the corner.

Mr. SPRINGMEYER.—You might mark a large enough circle to cover it, so it would be within the circle.

Mr. THATCHER.—Just mark approximately where it is.

A. It is around in here somewhere; that is only approximate, though (marking on photograph).

Q. Now this ridge, as I understood you to say just a moment ago, is northerly from the upper bunk-house? [544] A. Just north of it, yes.

Q. How did it happen then that this ridge is southerly from the location monument?

A. That is something I can't answer.

(Testimony of Parker Liddell.)

Q. Is this the northerly bunk-house "C" marked on this map? A. No, that is the office.

Q. Is not the bunk-house shown on there? (Referring to Ex. No. 3.)

A. The bunk-house is shown, but I believe the office is not shown.

Q. Now, going to the Evening Star claim, you have been pretty thoroughly over that claim, have you, Mr. Liddell? A. All over it, yes.

Q. And you surveyed that in making your patent survey? A. Yes.

Q. I call your attention to the location monument, or the point marked "Location Discovery Evening Star Claim," and ask you what is the condition of the formation or the surface showing at that point?

A. At the point shown as the location discovery point of the Evening Star lode, there is a little gulch or ravine comes down, and the monument is right in the ravine.

Q. The monument is right in the ravine; what is the character of the soil or ground right there?

A. Well, for a few feet on each side of the monument, the natural wash and soil that you have in a ravine is there.

Q. Is there any cropping at or near that point?

A. Well, probably not within ten or twenty feet.

Q. Isn't it a fact there isn't any within sixty or seventy or eighty feet?

A. No, I would not say it is a fact that there was none.

Q. Isn't it a fact there isn't any nearer than cut

(Testimony of Parker Liddell.)

number 20 between eighty and ninety feet, from that location monument?

A. No, I would not say it is a fact that there is none closer than that.

Q. Is there anything nearer than eighty or ninety feet which constitutes [545] a lode or ledge in place, to that location monument?

A. Well, I can't say positively there is, but, on the other hand, I could not say positively there is not.

Q. You can't say there is; did you ever see any there?

A. If I recall properly, the rock comes to the surface each side of that ravine, within twenty feet each way of that monument.

Q. Well, I asked you if there is anything there in the nature of a lode or vein at that point that you found or observed?

A. Well, I never looked for one, I don't know of any.

Q. The only place you have found anything that looks like a lode or vein, as I understand it, was in open cut 20, in that vicinity?

A. That is the only place I examined for it.

Q. The only place you examined? A. Yes.

Q. How did you designate open cut 20 on your patent plat?

A. I think I designated it as the discovery cut.

Q. From what memoranda or data did you designate that as the discovery cut?

A. Well, I was under the impression that I had been told that was the discovery cut.

(Testimony of Parker Liddell.)

Q. Did you take with you when you made this survey the location certificate and amended location certificate of this claim? A. I had copies of them.

Q. You had copies of them? A. Yes.

Q. Under the rules of the department you are given copies of the location certificate and amended location certificate, are you not, with the order of survey? A. We are.

Q. Did the location certificate describe this as the discovery cut? A. I don't remember.

Q. You assumed that as the discovery cut, did you not? A. I assumed it, yes.

Q. And put it on the map as such? A. Yes.

Q. You had no definite information as to whether it was or not [548]

A. No. I had no definite information that I can recall.

Q. That you can recall? A. No.

Q. Now, with reference to the shaft which was in that cut, you said that was at the mouth of the cut?

A. Well, my recollection is that it was toward the mouth rather than toward the face of the cut.

Q. Don't you remember instead of being that way it is exactly the opposite, and toward the face instead of the mouth, and that you can't reach the face of the cut owing to the fact you would drop in the shaft?

A. If you go along the length of the cut you come to the shaft first, but that would occur, whether exactly in the mouth or at the face.

(Testimony of Parker Liddell.)

Q. Isn't the shaft, as a matter of fact, sunk right in the face of the cut?

A. My recollection is it is a few feet at least of the face.

Q. Then a shaft was sunk from that, was there?

A. The shaft is sunk from the floor of the cut.

Q. From the bottom of the cut? A. Yes.

Q. Which way does this cross-cut—did you say it was a cross-cut or drift? A. Cross-cut I said.

Q. Which way is that run?

A. It is run easterly from the shaft.

Q. Easterly from the shaft; it follows the same general direction at a lower level as the cut does above, doesn't it? A. Yes.

Q. Going to the east? A. Yes.

Q. Did you say there was a vein there—did you say there was a vein in the bottom of that cut, or that you had seen a vein at the bottom or sides of that cut, not below the shaft, not in the shaft?

A. No, I didn't say I had seen a vein there before the—

Q. No, any time—now. [547]

A. No, I said that the whole cut was in material that was silicified, and showed considerable action.

Q. You don't want to be understood then, Mr. Liddell, as testifying that cut number 20, at any place in cut number 20 as it originally existed, you could then or now see a vein or lode of mineral-bearing rock in place? A. Well, you could see it now.

Q. You could see it now?

A. I believe that at the present time you could see

(Testimony of Parker Liddell.)

what is a vein in a portion, that would previously have been a portion of this cut.

Q. Did you prior to September, 1913, or have you since, seen in that cut, assuming it to exist as it did before the shaft, eliminating the shaft,—did you see a vein or lode of mineral-bearing rock in place in that cut?

A. The difficulty comes, General, in the shaft, taking away a portion of the cut that existed previously.

Q. The difficulty comes in the shaft, taking it away —all right. Which way did this vein, or this that might be a vein, run beneath the surface?

A. Northerly and southerly.

Q. Northerly and southerly; then as a matter of fact, the cut would cross-cut it, wouldn't it, instead of drifting on it? A. The cut would cross-cut it.

Q. Then if it were once exposed in the sides it would still be there, wouldn't it? A. Certainly.

Q. Then if it was ever there you could see it now, couldn't you?

A. You could see it in the side of the shaft, but you could not see it in the bottom of the cut.

Q. Well, could you see it in the side of the cut to a depth where the shaft started?

A. As I recollect, you would have to see it in the bottom of the cut as it existed prior to the sinking of the shaft.

Q. It was not exposed in the sides of the cut then?

A. Well, it might have been for a short distance.

[548]

Q. Then, if you cross-cut it, take a cross-section of

(Testimony of Parker Liddell.)

it, it is bound to be exposed if it is there?

A. It would depend on the depth of the cut, of course, at that point.

Mr. HIBBARD (JUROR).—What is the difference between a drift and a cross-cut?

A. A cross-cut is supposed to cross-cut the formation; a drift is supposed to be an opening that runs along a vein or lode.

Q. How?

A. It is work right on the vein; if you had a vein coming through the formation, you would run a drift right along the vein, and run a cross-cut at right angles to the claim, or the vein.

Mr. THATCHER.—(Q.) Did you testify anything with reference to the Evening Star, cut number 24 on the Evening Star?

A. That is the lower cut?

Q. Yes, sir. A. I think so.

Q. What was the character of that?

A. That cut was run in a leached material, quartz, carrying a limonite stain, or iron stain; the quartz was fragmentary, pretty well broken up.

Q. It carries an iron stain, does it?

A. It does, along the interstices of the rock.

Q. And you say that is quartz? A. It is.

Q. There is quartz shown in there. Did you introduce any assays of that cut, Mr. Springmeyer?

Mr. SPRINGMEYER.—I believe so; I don't remember which it is, though.

WITNESS.—I think it is number nine.

Mr. THATCHER.—(Q.) You say there was a vein exposed there?

(Testimony of Parker Liddell.)

A. Yes, there is a vein exposed there?

Q. And how wide is it?

A. The sample I took was—

Q. No, how wide was the vein; I don't care how wide your sample is.

A. I took the sample between two walls, and it was approximately [549] fifty inches.

Q. The vein is fifty inches wide there?

A. The vein is probably at that point, four feet.

Q. The vein is about four feet wide? A. Yes.

Q. Did you take it from any place which was exposed prior to September, 1913—the sample?

A. At the time I first visited the cut, the bottom was still within some dirt that had fallen down, and I think there was grass there; but I think the point at which I took this sample was exposed prior to September, 1913.

Q. What direction did that vein run?

A. Northerly and southerly.

Q. I don't believe you introduced your assays on that; give me the sample number of that?

A. Fifty-six inches, I believe, is correct.

Q. Now, to go back again to Salt Lake No. 3, you took one sample from cut No. 1, and got two samples from cut No. 2? A. Yes, sir.

Q. Now you also took a sample, which was offered in evidence yesterday, from one of the cuts below the mill? A. Yes, sir.

Q. That is the second cut down; the one I have my finger on (indicating on map)?

A. Well, it was the lower mill main cut, I believe;

(Testimony of Parker Liddell.)

below that cut there is an excavation for a tank but this was the cut proper for the mill excavation.

Q. The cut proper for the mill excavation?

A. I was going to say for some tanks the cut is not within the mill building, it is not contained in the mill building.

Q. Does that run up right to the mill, right to the wall of the mill?

A. Well, not quite to it, I don't think.

Q. How far from it? Let us see if we can point it out here where you took that sample. (Referring to Defendant's Ex. No. 3.)

A. I think it is at the face exposed immediately behind this [550] tank, as I recall it.

Q. Just put an X. on that. (Witness marks the point as directed on Defendant's Exhibit No. 3.)

JUROR.—What did that run?

A. $3.36.

Mr. THATCHER.—(Q.) Now, you took a sample from that point; do you know what character or process was used in the mill?

A. Well, to a certain extent, yes, sir.

Q. Can you tell the jury, generally, what it was?

A. It was a leaching process in which they used sulphuric acid, I believe, to leach out the copper value in the ore.

Q. Sulphuric acid to leach out the copper value in the ore?

A. Or ferric liquers, that is, iron solutions.

Q. Do you know what character of ore was run in that mill?

(Testimony of Parker Liddell.)

A. Well, only in a general way; I have no positive knowledge.

Q. Copper?

A. It was copper ore, which I understood contained some gold and silver, and which was taken from the mine several hundred feet away.

Q. Copper ore containing some gold and silver which was mined from adjoining properties belonging to the company? A. Yes, sir.

Q. Isn't it a fact that underneath that mill, and in all of the cuts of the mill itself, and especially those below the mill, there is a precipitation of copper upon all of the rocks, due to leachings from the mill?

A. Yes, there is quite a distinct stain of copper sulphate on the surface of the rocks which are below the leaching tanks.

Q. All through there, isn't there?

A. To quite an extent, yes.

Q. And you can take your finger and scrape off copper precipitates a great many places all along?

A. Copper stain, I never tried it with my finger.

Q. You can go all through there, and all of that rock below the [551] mill is impregnated with leachings from the mill, isn't that a fact? A. No.

Q. It is not? A. No.

Q. Isn't that pretty well broken up through there, shattered?

A. Yes, the rock is thoroughly porous.

Q. It was blasted originally, too, wasn't it?

A. I presume it was.

(Testimony of Parker Liddell.)

Q. And that is where you got this sample from?

A. Yes, but I picked down the face before taking the sample.

Q. How much did you pick out of the face; how far in did you pick that face?

A. Three or four inches.

Q. And from that you took a sample, and from that you got your assay of $3.36? A. Yes.

Q. Under that mill?

A. Well, this point was not directly under any of the leaching tanks.

Q. It was not directly under? A. No.

Q. Were there leaching tanks up in the mill itself?

A. Well, I think there were.

Q. And weren't there leaching tanks on the bench just above that wall that you have pointed to, and didn't you see the platform where they had formerly stood?

A. I don't remember of having seen a leaching tank up there.

Q. Don't you know there is one leaching tank right above that point at the present time?

A. No, there is no leaching tank above that point at the present time.

Q. Don't you know in the mill itself there are leaching tanks right now?

A. I don't know that either.

Q. You don't remember that, or have you been in the mill?

A. I haven't been in the mill.

(Testimony of Parker Liddell.)

JUROR.—What is the mill, a quartz mill with stamps? [552]

A. No, I think they have a Huntington mill to crush their rock, or at least they had one there.

Mr. THATCHER.—(Q.) This sample number 6, thirty-eight, shattered salicious material, cut in shaft Evening Star, is that the one you took from the southerly end of the Evening Star, this one down here?

A. No, it is not; neither one of these, General. Sample number 9 is what it is.

Q. Where was this sample number 6 taken from?

A. That was taken from the south exposure in the shaft which was dug in the floor of the cut, just easterly from the location discovery monument of the Evening Star lode.

Q. This is Defendant's Exhibit number 17, that is the one which you got from the Evening Star, the south end of the south cut? A. Yes.

Q. Marked number "24" on this map (Exhibit "A") and marked "69" on Mr. Tibby's map?

A. That is the cut.

Q. What was the result of that assay?

A. .02 ounces in gold, one ounce in silver, trace of copper, gold and silver value 90 cents.

Q. .02 of an ounce in gold? A. Yes, sir.

Q. What kind of a scale did you use?

A. What sort of a scale do you mean?

Q. What kind of a scale do you use, what is the name of it—describe it; what kind of a balance in making your assays?

(Testimony of Parker Liddell.)

A. These were weighed on a Keller balance, manufactured, I believe, in Salt Lake City.

Q. Where is that balance?

A. It is at the Rex Mine in Midas, Nevada.

Q. You made these assays there? A. I did.

Q. How much of that value is gold?

A. Forty cents.

Q. Forty cents in gold; would you consider an assay of forty [553] cents in gold would justify a prudent man in spending his time and money in developing it?

A. Well, under certain conditions I would.

Q. You would? A. Yes.

Q. If he had an ounce of silver along with it?

A. Well, it does not necessarily have to have an ounce of silver along with it.

Mr. SPRINGMEYER.—You mean to spend the money for development, don't you, General?

Mr. THATCHER.—I asked him if he thought it would justify him.

JUROR.—Is that the fifty-six inch ledge?

A. Fifty-six inch, yes.

Mr. THATCHER.—(Q.) That is the fifty-six or forty-eight inch ledge on the southerly end of the Evening Star?

A. Yes, the sample was taken along fifty-six inches.

Q. I call your attention to what purports to be a certified copy of a transcript of expenditures for improvements of mineral survey No. 4175, and ask you if that is a true copy of your certificate of ex-

(Testimony of Parker Liddell.)

penditures made on this patent survey? (Hands to witness.)

A. I don't know that it is necessary to go all over this.

Mr. SPRINGMEYER.—Was this a certificate of improvements for the Evening Star?

Mr. THATCHER.—No, for all of them; I asked him if that is a true copy of it.

(Recess for ten minutes. After recess.)

Q. Is that a correct copy of your report of expenditures made to the surveyor-general in the application for patent? A. I believe it is.

Mr. THATCHER.—We offer in evidence, if the Court please, so much of it as applies to the Salt Lake No. 3, Evening Star [554] and Midas.

Mr. SPRINGMEYER.—No objection.

(The report of expenditures is admitted in evidence, marked Plaintiff's Exhibit "A-7" and reads as follows:)

**Plaintiffs' Exhibit No. "A-7"—Report of Expenditures.**

"DEPARTMENT OF THE INTERIOR.

Office of U. S. Surveyor-General.

Reno, Nevada, May 26, 1915.

I, John B. O'Sullivan, U. S. Surveyor-General for Nevada, do hereby certify that the annexed transcript of the Expenditures of Five Hundred Dollars Improvements upon Mineral Survey No. 4175, is a full, true and correct copy as the same is

found on record in this office.

[Seal] JOHN B. O'SULLIVAN,
United States Surveyor-General for Nevada.

(Revenue Stamp.)

SURVEY No. 4175.

EXPENDITURE OF FIVE HUNDRED DOLLARS.

I certify that the value of the labor and improvements made upon or for the benefit of each of the locations embraced in said mining claim by the claimant or its grantors is not less than five hundred dollars, and that said improvements consist of:

No. 1. The discovery shaft of the JOHN JOHN lode.

No. 1. The discovery tunnel of the BLUE JACKET lode.

No. 1. The discovery cut of the YELLOW JACKET lode.

No. 1. The discovery shaft of the EAGLE lode.

No. 1. The discovery shaft of the MIDAS lode, the center of which bears N. 82° 35′ W. 145 ft. from Cor. No. 3 Yellow Jacket lode, 4x6x10 ft. deep, course N. 10° W.

Value .....$100. [555]

No. 2. A tunnel, the mouth of which bears N. 47° 15′ W. 615 ft. from Cor. No. 4, Midas lode, 4x6 ft. running N. 45 E. 52 ft. to face.

Value .....$500.

No. 3. A shaft, the center of which bears S. 50° 12 ft. from Cor. No. 2, Midas lode, 4x6x12 ft. deep; course No. 75° East.

Value ..... $50.

No. 1. The discovery cut of the EVENING STAR lode, the mouth of which bears N. 78° E. 75 ft. from the discovery point of the Evening Star lode, 5 ft. wide, 7 ft. face, running N. 78° E. 23 ft. to face.

Value ..... $100.

No. 2. A cut, the mouth of which bears N. 20° 04′ E. 318 ft. from Cor. No. 2, Evening Star lode, 5 ft. wide, 10 ft. face, running N. 13° 30′ W. 27 ft. to face.

Value ..... $150.

No. 3. A shaft, the center of which bears S. 21° E. 594 ft. from Cor. No. 3, Evening Star lode, 4x6x33 ft. deep. From the bottom of this shaft an inclined drift, 4x6 ft., is run east 24 ft. to face.

Value ..... $400.

No. 1. The discovery shaft of the COPPER QUEEN lode.

No. 1. The discovery shaft of the COMET lode.

No. 1. The discovery shaft of the LUCY lode.

No. 1. The discovery tunnel of the REONA lode.

No. 1. The discovery tunnel of the Salt Lake No. 1 lode.

No. 1. The discovery tunnel of the Salt Lake No. 2 lode, the mouth of which bears S. 57° 15′ E. 275 ft. from the discovery point of the Salt Lake No. 2 lode, 4x6 ft., running 300 ft. S. 72° E. to face. At a point 130 ft. from the portal of this tunnel a drift 4x6 ft., is run N. 17° W. 45 ft. to face, and S. 17° E. 60 ft. to face.

Total value ..... $4,000.

NOTE: From the point where this tunnel is run the hills rise rapidly to the east and south and it was with a view to developing the several vein systems and formations of the MIDAS, [556] SALT LAKE No. 2, YELLOW JACKET, EAGLE and BLUE JACKET locations that this work was done. The point where this tunnel is located presents the most advantageous position for the development of the veins and ore bodies of the several locations named thru one system of mine workings and one plant of machinery. An undivided one-fifth interest is therefore proportioned to each of the above locations.

Undivided 1/5 interest to MIDAS lode ..... $800.

No. 1. The discovery shaft of the Salt Lake No. 3 lode, the center of which bears S. 39° E. 338 ft. from Cor. No. 2 Salt Lake No. 3 lode, 4x6x10 ft. deep; course S. 35° W.
Value ..... $100.

No. 2. A shaft, the center of which bears S. 56° 30′ E. 285 ft. from Cor. No. 2 Salt Lake No. 3 lode, 4x5x8 ft. deep; course West.
Value ..... $75.

No. 3. A cut, the S. W. corner of which bears N. 76° W. 205 ft. from Cor. No. 1 Salt Lake No. 4 lode, 12 ft. wide, 6 ft. face, running N. 65° E. 14 ft, to face.
Value ..... $100.

No. 4. A cut, the N. W. Cor. of which bears S. 6° E. 365 ft. from Cor. No. 3 Salt Lake No. 3 lode, 60 ft. wide, 12 ft. face, running N. 55° E. 30 ft. to face.
Value ..... $400.

No. 5. A cut, the N. W. Cor., of which bears S. 2° 15′ E. 382 ft. from Cor. No. 3 Salt Lake No. 3 lode, 60 ft. wide 14 ft. face, running N. 55° E. 35 ft. to face.

Value ..... $500.

No. 6. A shaft, the center of which bears S. 51° W. 475 ft. from Cor. No. 3 Salt Lake No. 2 lode, 6 ft. in diameter by 50 ft. deep.

Value ..... $500.

No. 1. The discovery tunnel of the Salt Lake No. 4 lode.

No. 1. The discovery shaft of the Salt Lake No. 5 lode.

No. 1. The discovery tunnel of the Salt Lake lode.

[557]

OTHER IMPROVEMENTS.

A fifty-ton copper leaching mill, the N. W. Corner of which bears S. 10° 50′ E. 355 ft. from Cor. No. 3 Salt Lake No. 3 lode, 50x90 ft. Course of long sides N. 50° E.

A frame office building, the Southeast corner of which bears from Cor. No. 3 Salt Lake No. 3 lode S. 35° 30′ W. 381 ft.

Course of long sides N. 10° W. 14x36 ft.

A frame bunk house, the Southeast corner of which bears from Cor. No. 3 Salt Lake No. 3 lode, S. 24° W. 544 ft., 14x30. Course of long sides north.

A frame boarding house, the Southeast corner of which bears S. 21° W. 610 ft. from cor. No. 3, Salt Lake No. 3 lode, 20x36 ft. Course of long sides north.

A frame bunk house, the Southeast corner of

(Testimony of Parker Liddell.)

which bears S. 19° W. 689 ft. from Cor. No. 3, Salt Lake No. 3 lode, 14x30 ft. Course of long sides north.

A frame bunk house, the Southeast corner of which bears S. 17° 15′ W. 746 ft. from Cor. No. 3, Salt Lake No. 3 lode, 14x30 ft. Course of long sides north.

Above buildings belong to claimant herein.

U. S. SURVEYOR-GENERAL'S FINAL CERTIFICATE OF FIELD-NOTES.

DEPARTMENT OF THE INTERIOR.

Office of U. S. Surveyor-General.

Reno, Nevada, March 7, 1914.

I, U. S. Surveyor-General for Nevada do hereby certify that the foregoing instrument of the Field-Notes, return and approval of the survey of the mining claim of the Glasgow & Western Exploration Company, Ltd., known as the JOHN JOHN, Blue Jacket, Yellow [558] Jacket, Eagle, Midas, Evening Star, Copper Queen, Comet, Lucy, Reona, Salt Lake No. 1, Salt Lake No. 2, Salt Lake No. 3, Salt Lake No. 4, Salt Lake No. 5 and Salt Lake lodes situate in Battle Mountain Mining District, Lander County, Nevada, in section unsurveyed, Township No. 31 N., Range No. 43 E. M. D. M., and designated as Survey No. 4175, has been correctly copied from the originals on file in this office; that said Field-Notes furnish such an accurate description of said mining claim as will, if incorporated into a patent, serve fully to identify the premises, and that such reference is made therein to natural objects or per-

(Testimony of Parker Liddell.)

manent monuments as will perpetuate and fix the locus thereof.

And I further certify that five hundred dollars' worth of labor has been expended or improvements made upon or for each location of said mining claim by claimant or its grantors, and that said improvements consist of 12 shafts, 1 shaft and trench, 1 tunnel and trench, 2 trenches, 10 tunnels, 2 tunnels and drifts, one tunnel, drifts and raise, 1 incline, 7 cuts and 1 shaft and incline drift. Value at $32,900, and that no portion of said labor or improvements has been included in the estimate of expenditures upon any other claim.

I further certify that the plat thereof, filed in the U. S. Land Office at Elko, Nevada, is correct and in conformity with the foregoing Field-Notes.

[Seal] MATHEW KYLE, (Sgnd.)
United States Surveyor-General for Nevada. [559]

Mr. THATCHER.—(Q.) I call your attention to a piece of rock, Mr. Liddell, and ask you if that is a fairly good representative specimen of rock found below the mill?

A. I think you could probably find such a piece as that below the mill.

Q. Don't you think that is a fairly representative piece of the kind that can be found below the mill?

A. It is exceptional in the amount of copper stain shown on it.

Mr. THATCHER.—We offer it in evidence, if the Court please.

The COURT.—If there is no objection, it will be admitted.

(Testimony of Parker Liddell.)

Mr. SPRINGMEYER.—I would like to ask a question or two.

Q. Is that like the vein material from which you took the sample, or is it not?

A. No, it is not.

Q. Is that like the country rock of that vicinity?

A. I don't want to break a piece of that, but it seems to be similar to the country rock in that immediate vicinity.

Q. Do you want to try to see whether you can scratch it with a knife. (Witness scratches rock with knife.)

Mr. SPRINGMEYER.—We object to the introduction of that on the ground it is immaterial, and not proper cross-examination; he has stated that he took a specimen from vein material in the vicinity of the mill, and that this, in his judgment, is country rock; besides that, it is stained in a different way than the vein material from which he took a sample.

The COURT.—I think I shall exclude that.

Mr. THATCHER.—(Q.) You have been in and around below that mill, have you, Mr. Liddell?

A. Some, yes.

Q. And in the cuts and excavations below it?

A. Some.

Q. And in the rocks there are stains similar to that in a number of places?

A. Yes, there are stains that are somewhat similar; I don't remember having seen any that are exactly like that, though. [560]

Mr. SPRINGMEYER.—We will withdraw our objection to that being admitted in evidence; it may be

(Testimony of Parker Liddell.)

of benefit to the Court and jury, and we consent that it go in for what it is worth.

The COURT.—If you both want it in it will go in by stipulation, not under the ruling of the Court.

(The piece of rock is marked Plaintiffs' Exhibit "A-8.")

Mr. THATCHER.—(Q.) You didn't make any memoranda in your notes and patent survey with reference to cut number 2?

A. I didn't take any tie to that cut.

Q. You didn't take any tie to that cut, and made no notes of it in your memoranda for survey?

A. No.

Q. Mr. Liddell, did you testify as follows on the former trial of this case, reading from page 17 or the transcript of testimony: "A. The work on the Salt Lake No. 3 lode consists of a grading for a mill; a grading for a road running diagonally across the northeast portion of the claim; a shaft six feet in diameter, fifty feet deep, which is south of the east and west center line, and west of the northerly and southerly center line of the claim. There is also a shaft 4 by 6 by 8 feet deep, which is very close to the west side line, and about 140 feet from the southwest corner of the claim. There is also a cut 12 by 6 by 14 feet on the easterly portion of the claim, about in the center, running northerly and southerly; there are two small shafts in the northwest portion of the claim; and in addition to this work there are a number of buildings which include the office building, the boarding-house, the bunk-house, leaching tanks,

(Testimony of Parker Liddell.)

and a portion of the mill building proper." You so testified in the former trial? A. I believe I did.

Q. In that testimony as to the work you did on Salt Lake No. 3, you didn't mention cut number 2, designated as Exhibit "A"? [561]

A. No, I didn't mention it; I don't think it was included in your reading of it.

Q. It wasn't included in my reading of it?

A. No.

Mr. THATCHER.—That is all.

Redirect Examination.

Mr. SPRINGMEYER.—(Q.) Will you please state what the stain or deposit on that piece of rock is? (Referring to Plaintiff's Exhibit "A-8.")

A. Well, practically all the blue stain is the typical copper sulphate stain.

Q. What does that come from?

A. Well, that comes from the solution used in the mill for extracting the copper value from the ore.

Q. Will that stain impregnate rock to a depth of three or four inches?

A. Well, it is not likely that it would; it might in a long course of years possibly work in in very porous rock, a few inches.

Q. Would it in that character of rock, in your opinion as a mining engineer, inside of three years?

A. I don't think it would.

Q. You say when you took the sample back of the mill you chipped off three or four inches, is that correct? A. That is correct.

(Testimony of Parker Liddell.)

Q. And from what sort of material did you take your sample?

A. I took the sample from a comparatively soft, very much oxidized quartz material.

Q. Was it the same or different from this material?

A. Well, it was considerably different, it being much softer, and having a typical limonite or iron stain, and also showing stains of copper, or copper carbonate, and mineral called malachite, as distinguished from the copper sulphate by the color.

Q. Did you take it from vein material or not?

A. It was from vein material, yes. [562]

Q. The copper stain on this rock you said was sulphate, and not azurite or malachite, is that correct?

A. There might possibly be some original malachite stain on this rock; there is none that I can find, that I can identify.

Q. In your opinion as a mining engineer, is that quartzite, or is it some other material?

A. I would like to break the rock before I would offer any opinion, so I could get a fresh cleavage face.

Q. Well, let it go.

Mr. THATCHER.—I consent that he may break it up during the recess or adjournment.

Mr. SPRINGMEYER.—(Q.) You stated in answer to General Thatcher's cross-examination, that you didn't on your former testimony in the trial between Mr. Lamont and some of the present plaintiffs in this action, pertaining to this property, men-

(Testimony of Parker Liddell.)

tion anything regarding the post you found two hundred feet east from the office building on the Salt Lake No. 3; were you asked at that time concerning that point?

A. I was not asked if I had found a post at that location, but I believe I was asked if I had found any other monument on the Salt Lake No. 3, and I believe that I answered that I had not.

Q. Did you at that time consider this to be a monument, and do you so—

Mr. THATCHER.—We object.

Mr. SPRINGMEYER.—(Q.) Well, explain your former testimony then as well as you can, if you have any explanation.

A. Well, the explanation is simply this, that I had visited this and had been unable to identify it in the least, had thought, probably—that is, I had concluded at the time that I visited it, that it probably was some one of any number of corners that you are likely to find in making a survey, and to which no importance [563] can be attached, and at that time I simply forgot all about the matter; I didn't recall it at the time I offered my testimony.

Q. Now, referring to the small depression, or cut, or trench, that has been enlarged since the former trial, has it not? A. It has.

Q. Can you say whether or not there are any other small cuts or depressions anywhere on these three claims not included on your plats?

A. Well, there are probably quite a few.

Q. Is it your practice to include all cuts and de-

(Testimony of Parker Liddell.)

pressions, regardless of their apparent importance, in making plats?

A. Well, my own practice is not to include any cut or depression unless it apparently is large enough to warrant a certain amount being given as the cost of it, it would be a physical impossibility to go over twenty acres of ground and give every spadeful of dirt that had been moved over, or give every little cut or hole; lots of times you will find a badger hole, in the distance it may look like a cut, and you go up to it and it will be nothing but a hole; other times you will find little holes dug here and there by prospectors to find if the surface dirt will pan; a man could not possibly give all those little holes and cuts, any one of which might be of importance if it came out that the title to the claim was in question.

Q. It is a fact, is it not, that the Government sends an expert or an inspector to check up your work?

A. I believe at the present time they send an inspector to check up all the work.

Q. And there is no penalty attached if the mineral surveyor does not include all those little things, is there?

Mr. THATCHER.—Objected to as immaterial.

The COURT.—It is immaterial, and the record is the best evidence. [564]

Mr. SPRINGMEYER.—(Q.) You said on cross-examination that there was no monument at the discovery point, represented as the discovery point of Salt Lake No. 3 on Plaintiffs' Exhibit "A"?

A. Yes.

(Testimony of Parker Liddell.)

Q. That is correct?

A. No monument there, as far as I know.

Q. Is that one of the discovery monuments that you assumed for the purposes of platting?

A. That is the point I assumed as the discovery point on Salt Lake No. 3.

Q. And you said that there was solid rock from twenty to forty feet south of that point in your opinion, an outcrop on the ridge near the road?

A. Yes, I am quite sure that there was solid rock approximately that distance from that point.

Q. I will ask you if you can locate that on Defendant's Exhibit No. 2, if so, mark it with a pencil, X—the ridge or any of that solid rock, if you are able to find it.

(Witness marks the point on Defendant's Exhibit No. 2.)

Q. You have marked it with an oblong?

A. An ellipse.

Q. You say at that point there is hard rock outcroppings, to the best of your recollection?

A. To the best of my recollection there is solid rock at that point.

Mr. THATCHER.—Mark that down here, "Liddell, solid rock."

WITNESS.—I will have to change that, it is right about there (marks on Defendant's Exhibit No. 2).

Mr. SPRINGMEYER.—It is now marked with a line, is it?

A. I think about at that point it is solid rock.

(Testimony of Parker Liddell.)

Q. You can't distinguish the rock in the photograph, can you?

A. No, I don't think you could distinguish a cropping of rocks large enough so as to show in a photograph; the cropping is all along that side; it is hard to distinguish them, just the way the light shows. [565]

JUROR.—Where is the location point?

A. Well, the location point is given in the center of the claim; and would come right in, I think about there (indicates on Defendant's Exhibit No. 2.)

Mr. THATCHER.—Mark the location point on there.

A. It is approximately there. (Marking point on Defendant's Exhibit No. 2.)

Mr. THATCHER.—Bring it down to the edge here, and mark it "Location point Salt Lake No. 3"). (Witness marks as directed.)

Mr. SPRINGMEYER.—(Q.) You do not positively fix that as the location point?

A. No, that location point is approximate.

Q. That is the point you assumed, you don't mean the jury to understand that is positively the point of location?

A. That is the point on the ground where the original discovery monument would be if you set it there from the reading of the location discovery notice, taking, of course, the corners as found on the ground as the guide to fixing that point.

JUROR.—Those distances were paced originally?

A. Yes, stepped off.

(Testimony of Parker Liddell.)

Mr. SPRINGMEYER.—(Q.) You said you made these assays with a Keller scale, is that correct; is that a Kellar button balance?

A. The instrument I used is a Kellar button balance, and is the most, or one of the most, delicate instruments used in weighing up the assay gold buttons and silver buttons.

Q. As a matter of fact, smaller assays than forty cents in gold and silver are frequently made with that scale, is not that true? A. Yes.

Mr. SPRINGMEYER.—That is all. [566]

Recross-examination.

Mr. THATCHER.—(Q.) Will you take a pencil and mark on the map a point south corresponding to the position which you have just indicated as this ridge crossing the gulch, on Exhibit "A"?

A. Well, if it were—

Q. You don't need to put it clear across, but where you have marked it on the photograph.

A. As near as I could tell, it would be about along in there; one line would not represent it, of course.

Q. It would be thirty-five or fifty feet wide? There is a little road comes up there in front of the houses, just indicate that with a pencil line.

A. There is a road runs down the little hill there, and comes in in front of the office, somewhat in that position. (Draws line on Plaintiffs' map, Exhibit "A.")

Mr. THATCHER.—That is all.

Mr. SPRINGMEYER.—That is all. [567]

**Testimony of Joseph Jurey, for Defendant (Recalled).**

Mr. JOSEPH JUREY, recalled by defendant for further examination, testified as follows:

Mr. SPRINGMEYER.—(Q.) Mr. Jurey, will you please state to the Court what veins, if any, on the Salt Lake No. 3, you knew of in 1912?

A. Well, the vein along on the road going into the mill.

Q. Any other?

A. I think that is about all that I can recall in 1912.

Q. You say the vein in the road going to the mill, and the mill, or what did you say?

A. I said the one going into the mill.

Q. How many veins is that?

A. How many what?

Q. How many—two veins then, do I understand?

A. I think there is several small veins around in there, but this one in particular.

Q. Did you know of excavating work back of the mill in 1912? A. Yes.

Q. Do you know whether there was any vein there in 1912? A. There was, yes.

Mr. THATCHER.—Back of the mill, Mr. Springmeyer?

Mr. SPRINGMEYER.—Back of the mill, more accurately speaking, back of the leaching tanks; I have used the two terms indiscriminately.

A. Yes, sir.

Q. And the other you say was on the road leading

(Testimony of Joseph Jurey.)

to the mill? A. Yes, sir.

Q. The work for excavating the mill, and the work of making that road was done in the year 1912, was it not? A. Yes, sir.

Q. Did you know of any veins on the Midas in the year 1912? A. Yes, sir.

Q. What ones?

A. One in the tunnel and the one on the discovery.

[568]

Q. What do you mean by the discovery, the discovery point that you made?

A. The location work.

Q. The location work? A. Yes.

Q. Not the discovery point that is marked on the patent map as the discovery? A. No. sir.

Q. Was there any work done in the tunnel on the Midas in the year 1912? A. Yes, sir.

Q. What work was done there—how many feet?

A. They drifted in there, I suppose about twenty or twenty-five feet.

Q. You drifted in there? A. Yes, sir.

Q. I understand you ran on the vein then?

A. On the vein, yes.

Q. So you knew of that vein in the year 1912?

A. Yes, sir.

Q. And work at the discovery, when was that done? A. In 1907.

Q. Now, on the Evening Star, what veins, if any, did you find in 1912?

A. Well, in the cut running east.

Q. That is the cut described as number 20 on

(Testimony of Joseph Jurey.)

Plaintiffs' Exhibit "A," is it not? A. Yes, sir.

Q. What work did you do at that cut in 1912?

A. Ran the cut in there about twenty feet.

Q. And what did you find?

A. Well, I found some veins along the cut.

Q. Do you know how large the vein was?

A. Well, about a foot or eighteen inches.

Mr. THATCHER.—Where is that?

Mr. SPRINGMEYER.—Point 20 on Plaintiffs' Exhibit "A."

Q. Now, you did the discovery work on the Evening Star at point 24, is that correct?

A. Yes, sir.

Q. That is in the southwesterly part of the claim?

A. Yes. [569]

Q. Point 24 on Plaintiffs' Exhibit "A," and point 69 on Defendant's Exhibit No. 5? A. Yes, sir.

Q. And the cut which you testified to as having been done in 1912 on the Evening Star is the same as number 60 on Defendant's Exhibit No. 5, is it not?

A. Yes, sir.

Q. The discovery shaft on which you said you found a vein on the Midas claim at the time you made the location, is designated number 25 on Defendant's Exhibit No. 5, is that the point?

A. That is the point.

Q. And the tunnel is designated on the same claim on which you said the work was done in 1912, "42," is that right? A. Yes, sir.

Q. And as to the Salt Lake No. 3, the point back of the mill or leaching plant on which you said you

(Testimony of Joseph Jurey.)

found a vein when the excavation was done in 1912, as "21," is that right? A. Yes.

Q. And is the point on the road on which you say you found the veins in 1912, designated as point "9"? A. Yes, sir.

Q. On defendant's map, Exhibit No. 5?

A. Yes, sir.

Mr. SPRINGMEYER.—That is all.

Mr. THATCHER.—(Q.) Did you assay any of these veins, Mr. Jurey? A. No, I did not.

Q. You never panned any of them? A. No, sir.

Q. Never made any tests in any shape or form to find out whether they carried any values?

A. No, sir.

Mr. THATCHER.—That is all. [570]

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VOLUME 3.

Pages 558 to 851.

*In the District Court of the United States, in and for the District of Nevada.*

Honorable E. S. FARRINGTON, Judge.

No. 1872 and No. 1873.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER, and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Transcript of Testimony.**
**Bill of Exceptions.**

Appearances:

Mr. GEORGE B. THATCHER and Mr. WILLIAM FORMAN, for Plaintiffs.

Mr. GEORGE SPRINGMEYER and Mr. P. G. ELLIS, for Defendant.

Filed July 30th, 1915, T. J. Edwards, Clerk.

Service hereof and a copy thereof, admitted this 30th day of July, 1915.

GEO. B. THATCHER,
WM. FORMAN,
Attorneys for Plaintiff. [571]

**Testimony of Benjamin F. Tibby, for Defendant (Recalled).**

Mr. BENJAMIN F. TIBBY, called by defendant for further examination, testified as follows:

Mr. SPRINGMEYER.—(Q.) Mr. Tibby, on what day or days was it you said you visited the Salt Lake, Evening Star and Midas claims?

A. February 18th, 19th, 20th and 21st of this year.

Q. What examination did you make at that time of the three claims?

A. Well, I made a thorough examination of all the surface included within the three claims, as well as an examination of some of the adjacent ground, and I went into a number of workings on the three claims.

Q. You say you examined some of the ground ad-

(Testimony of Benjamin F. Tibby.)

jacent to these three claims? A. Yes, sir.

Q. In what way did you examine the ground adjacent to these three claims?

A. Well, I gave the ground flanking these claims on the east and west a fairly careful examination on the surface, as well as going into some workings outside, to determine in general the nature of the country rock and the general formation; some things might be disclosed without the boundaries of the claims that would bear directly on what would be found within the claims.

Q. First with regard to the Salt Lake No. 3; in making an examination of that claim state whether you found any solid rock or any outcrop anywhere within the boundaries of the claim?

A. I did, yes, sir.

Q. Now as to the center of the lode line, did you find any solid rock or outcrop anywhere along the center of the claim?

A. Of course I didn't run a survey line along the center or lode line, but I was over all of that ground, and I can say that somewhere on that lode line there is solid rock exposed.

Q. Whereabouts?

A. Toward the southerly end of the claim [572] as I remember it, and I think possibly in the vicinity of the very north end line, where the lode line crossed there; I am not so sure as to that point, however, as I am about the country nearer the south end line of the claim.

Q. Can you fix the position, the approximate posi-

(Testimony of Benjamin F. Tibby.)

tion, from this photograph.

A. I will have to refer here to see how close to the buildings this lode line runs (goes to map); it appears that the lode line would run in front of the building marked number 8—well, there are several marked number 8, but it is the building nearest the lower right hand corner; if it does run as close to that as it appears from the map, I should say that there was solid rock exposed just south of that building, as well as down near the southerly end line, and beyond any of the buildings shown here. I think the red mark placed there by Mr. Liddell represents fairly the condition there. (Referring to Defendant's Exhibit No. 2.)

Q. Do you know whether or not there is a ridge anywhere around that point?

A. Well, from the appearance of the photograph and as I remember it, I would say there is, yes.

Mr. THATCHER.—I move to strike out the appearance of the photograph; let him testify from what he knows.

A. Well, I would say there is then.

Mr. SPRINGMEYER.—(Q.) Did you find any workings of any kind or description on Salt Lake No. 3 claim? A. I did, a number of them.

Q. Did you examine any of them?

A. Yes, I examined a number of them.

Q. Did you take any assays from any of the workings on the claim?

A. I did, yes, a number of assays.

Q. Describe the workings from which you took the

(Testimony of Benjamin F. Tibby.)

samples from which you made the assays? [573]

A. Referring to my own map, I took samples for assay from the point marked "Open Cut" and number 14. I took samples from the bank just below the mill, and marked 21. I examined the cut number 5 and the cut marked "A," but took no samples from those points.

Q. Did you have those samples assayed?

A. I did, yes, sir.

Q. Now referring to cut number 14 on your map, Defendant's Exhibit No. 5, did you take any photographs?

Mr. THATCHER.—May I ask if cut number 14 corresponds with 2 on Exhibit "A"?

WITNESS.—It is so designed, and I would just as soon refer to this, if you prefer.

Mr. THATCHER.—Whichever is best for the jury.

WITNESS.—My point number 14 is identical with number 2 on Plaintiffs' Exhibit "A."

Mr. SPRINGMEYER.—(Q.) Did you take any photographs of any vein matter, or any material, at that point?

A. I did, I took one photograph there.

Q. Where did you take it?

A. I took it standing at or near the mouth of this cut, and looking toward the face of it.

Q. How much space did that photograph cover as to the surface and the bottom of the cut?

A. It represented a portion of the cut somewhere a little below the surface of the ground, including

(Testimony of Benjamin F. Tibby.)

the left-hand corner part of this wall—the left-hand corner, and part of the face of the cut.

Q. How far from the surface of the cut would the photograph show?

A. Well, I don't remember exactly, but I should say two or three feet, perhaps.

Q. Was there a vein exposed at the point covered by your photograph?

Mr. THATCHER.—Objected to on the ground it is incompetent, irrelevant and immaterial. [574]

Mr. SPRINGMEYER.—In view of the former ruling of the Court, I admit it is. (Q.) Was there a vein exposed at the surface of the cut, if you know? A. Well, I could only say this much; I did not attempt to trace the vein beyond the edges of the cut on the surface, but the vein exposed within the cut reaches up to the three or four inches of soil on top.

Q. Could you say then whether or not the vein extends to the surface of the cut?

A. It does up the sides, yes, sir.

Q. Does the photograph you have in your hands correctly represent the vein and the surrounding material at the points you have testified?

A. Well, it represents that part of the vein— .

Mr. THATCHER.—We object to the testimony with reference to a vein; he can testify it correctly represents the cut, but to continually inject into this that it represents a vein, and it is not yet in evidence, I don't think is proper.

The COURT.—He can testify it represents the condition there; his opinion is another matter.

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(Testimony of Benjamin F. Tibby.)

Mr. SPRINGMEYER.—(Q.) Does it correctly represent the condition at the point? A. I think it does, yes, sir.

Q. What date was this taken?

A. It was taken on one of the days that I made the visit, between the 18th and 20th.

Q. And you made the photograph yourself?

A. I did, yes, sir.

Mr. SPRINGMEYER.—We offer that photograph.

Mr. THATCHER.—We object to it as incompetent, irrelevant and immaterial, a photograph taken of a condition which did not exist on the ground at the time the plaintiffs' rights were initiated, and there has been no showing that there was ever a discovery in this cut prior to the initiation of plaintiffs' title.

The COURT.—I will reserve the ruling on that until I pass on the samples.

(Photograph marked for identification.) [575]

Mr. SPRINGMEYER.—(Q.) As to the point marked 21 on your map; that is the point on the mill bank excavation?

The COURT.—(Q.) That photograph represents the conditions as they were when you took it?

A. Yes, sir.

Q. Last February? A. Yes.

The COURT.—He can testify as to whether it represents the conditions at the time the placers were located.

Mr. FORMAN.—It is conceded the cut was made

(Testimony of Benjamin F. Tibby.)

afterwards.

Mr. SPRINGMEYER.—Yes; but he testifies the conditions in the cut were the same throughout the surface; it is admitted that the cut was made subsequently to the location of the placers.

Mr. THATCHER.—Mr. Tibby has not testified that vein cropped.

Mr. SPRINGMEYER.—(Q.) Does that vein crop or not?

A. Beyond the limits of the sides of the cut?

Q. Yes.

A. Well, if I may be permitted a word of explanation, I would say when I made the visit, I supposed that what was exposed in that cut was what I was to examine, and didn't know it would be ruled out, and for that reason I made no careful examination beyond the vertical lines of the cut, and I didn't trace it beyond the vertical planes of the sides of the cut.

Q. Did you trace it to the surface of the cut?

A. Up the sides, right up to within three or four inches of the top.

Q. What did you find at point 21 on your map?

A. Point 21 is the point in the bank excavated for the leaching vats; I found in there a vein about a foot in thickness, very strongly marked, displaying abundant oxide of iron; the vein is flanked by the country rock, is soft and easily picked, is broken up, and contained inclusions of the wall rock in small pieces; that is a soft, porous, broken up material within the hard wall rock. [576]

(Testimony of Benjamin F. Tibby.)

Q. Did you take any photograph of any conditions exposed at that point?

A. I did, yes, sir, I took one photograph there.

Q. Of what?

A. Of this vein which I have just described.

Q. Is this the photograph you speak of? (Hands to witness.) A. Yes, sir.

Q. Does that correctly represent the conditions at that point? A. It does, yes, sir.

Mr. SPRINGMEYER.—We offer that in evidence.

Mr. THATCHER.—No objection.

(The photograph is admitted i evidence and marked Defendant's Exhibit No. 20.)

Mr. SPRINGMEYER.—(Q.) Will you state what the pick indicates, and what is represented by its appearance on the photograph?

A. The pick, which from the end of the handle to the end of the pick is twelve inches, was simply laid in there to give some relative object to compare with the width of the vein showing where it was laid, it was a trifle over a foot wide.

Mr. HIBBARD. (JUROR.)—Which place was this photograph taken?

A. That is the photograph taken of the vein which is exposed in the bank just below the mill and back of the leaching vats.

Q. This had not been worked?

A. There are no workings there other than the excavations.

(Testimony of Benjamin F. Tibby.)

Q. No new workings?

A. No. As I understand it, this excavation was made in 1912, or previous.

Mr. SPRINGMEYER.—That is correct, isn't it, General?

Mr. THATCHER.—Yes, that is correct.

Mr. SPRINGMEYER.—(Q.) Did you take any assays at this point?

A. I took one assay there.

Q. Shown on your photograph?

A. One at that point, yes, sir.

Q. Did you take the assays yourself?

A. I did, yes, sir.

Q. From samples of the vein material, I take it, is that correct? [577]

A. Yes, my sample there represented a sample taken across about nine inches or ten inches of the vein, I took it about four or five inches wide, and two or three inches deep, cutting a channel right across the full face of the vein when I took it; I might add, too, that I picked into that point several inches before I took the sample.

Q. What did that show in the way of values?

A. Do you want me to read from my book, or from the assay certificate?

Q. Have you the assay certificate?

A. It should be here by stipulation.

Mr. THATCHER.—We would just as soon you would read from the book.

WITNESS.—This is a copy taken from those assay sheets.

(Testimony of Benjamin F. Tibby.)

Mr. THATCHER.—(Q.) What number is the sample?

A. Twenty-one, identical in marking with the point on the map. That gave 03 ounces in gold, .2 ounces silver, one per cent copper, making a total value of $4.30.

Mr. THATCHER.—Give the values of each, Mr. Tibby.

A. That would be 60 cents in gold, ten cents in silver, and $3.60 in copper.

Mr. SPRINGMEYER.—(Q.) Did you give the values you obtained from the assay at the other point from which you took a sample, on Salt Lake No. 3? A. You mean points 1 and 2 on plaintiffs' map; I have those but I didn't give then; you didn't ask for them. Q. Will you give them now.

Mr. THATCHER.—They are objected to upon the ground they are incompetent, irrelevant and immaterial.

Mr. SPRINGMEYER.—The same point on which your Honor is holding the photogroph offered in evidence, in abeyance.

The COURT.—Those will follow the same course.

[578]

Mr. SPRINGMEYER.—I want to make the same offer.

WITNESS.—Shall I just read these from my book?

Mr. THATCHER.—You are not to answer the question, I have objected to it.

(Testimony of Benjamin F. Tibby.)

Mr. SPRINGMEYER.—I will offer the assay certificate finally.

Mr. THATCHER.—Some of the assays that possibly will not go in, I will expect copies of the certificates.

Mr. SPRINGMEYER.—We will have copies made.

Q. How many samples did you take at point No. 14, of the open cut marked on your map, which is represented by the first photograph?

A. Well, on points number 1 and 2 I took six samples, two from my point number 9, and four from my point number 14; two from the incline shaft above the road, and four from the Salt Lake No. 3 open cut.

The COURT.—Where you took the four samples from Salt Lake No. 3 on our cut 14, is marked "2" on the other map? A. Their number 2.

Mr. SPRINGMEYER.—(Q.) You did not give the assay values from the samples you took on the road, did you, Mr. Tibby?

A. I didn't take any samples on the road.

Q. Referring to the material back of the mill, represented by this last photograph, do you consider the exposure there a mineralized vein or not?

A. I do, yes, sir.

Q. Give your reasons for so considering that?

A. Well, we have all the essential characteristics of a vein; we have two solid wall rocks, enclosing a material different in character from the wall rocks,

(Testimony of Benjamin F. Tibby.)

and carrying appreciable values in gold, silver and copper.

Q. What other workings did you examine on the Salt Lake No. 3?

A. I examined an open cut between the houses marked number 4 on Plaintiffs' Exhibit "A," and number 5 on my own map; I found [579] nothing in there of any importance. I also visited a cut marked "A" on my own map, and a number 3 on Plaintiffs' Exhibit "A." As I remember it, it was just a little open cut—if I may refer to my note I can tell; however, I found nothing in there of any importance.

The COURT.—(Q.) That is at point 3?

A. At their point 3 and my point "A." I did not even take the length of that cut; I simply said there was nothing beyond slight fissuring, and extreme alterations, and general country rock along the cracks.

Q. Are those all the workings in Salt Lake No. 3 claim you examined, Mr. Tibby?

A. I examined the dumps of several shafts, including the well, but I did not go into any of those workings.

Q. Did you take any samples from Salt Lake No. 3 for any other purpose than assays?

A. I did; I took a number of samples at various points, both within the boundaries of the claim and adjacent thereto, for the purpose of determining the nature of the country rock.

Q. Did you testify that you had made an examination along the road leading to the mill?

(Testimony of Benjamin F. Tibby.)

A. I did, yes, sir.

Q. Did you testify that you took any samples there? A. I took no samples; no, sir.

Q. Did you examine the shaft and the road leading to the mill? A. I did, yes, sir.

Q. Did you take any samples there?

A. I took two samples that I spoke of a few minutes ago.

Q. Did you find any vein on the road leading to the mill? A. Other than that exposed in the shaft?

Q. Did you find any vein on the road itself?

A. I see. I think I did find something there; I have got this note, that at the point where the road crosses the north end line [580] of the Salt Lake No. 3, on the east side is a small showing of copper stain; since the road crosses in two places, I would say that it is a point farthest to the east, about at this point here (indicates on map No. 5).

Q. Farthest to the west, you mean?

A. No, farthest to the east. Then I have another note about that road, saying; Along the northeast bank of the road—that would be along this upper side of the road to the mill (indicating on map, Exhibit No. 5) are indications of fissuring on a small scale, visible at several points.

Q. Did you find any vein at the point where the shaft is sunk on the road leading to the mill?

Mr. THATCHER.—Objected to unless it is shown to have been on the surface.

Mr. SPRINGMEYER.—We have shown that by a number of witnesses, I think.

(Testimony of Benjamin F. Tibby.)

The COURT.—There is a showing that there was a vein exposed on that road.

Mr. SPRINGMEYER.—(Q.) Is there a vein exposed on the road in the vicinity of the shaft leading to the mill?

A. The same explanation applies to that as it did to the open cut; I traced the veins up to the surface, but not beyond.

Q. Did that vein lead to the surface of the road at that point?

A. It did unquestionably at that point, because there is no surface soil covering it there.

Q. State whether or not the vein extends into the part of the road exposed by the road excavation?

A. Well, it extends at least up to the very upper edge of the shaft, up the side and right to the point where the road would be.

Q. What was the condition of the material there as to being a [581] vein or otherwise?

A. I say there that the vein is visible on both sides in the bottom of the shaft, well defined walls, and soft heavily iron stained matter.

Mr. THATCHER.—I move to strike out all that part of the testimony with reference to the shaft; if he will confine the testimony to the road, and what was exposed on the road, I am perfectly willing.

Mr. SPRINGMEYER.—It is shown this vein goes right to the surface of the road.

The COURT.—Do you claim that is your discovery vein?

Mr. SPRINGMEYER.—No, we claim that vein

was discovered and known to the owners of the claim prior to the location of these placers. We don't claim that was the original discovery point of the Salt Lake No. 3.

The COURT.—Have you yet determined what you claim is the discovery point on Salt Lake No. 3?

Mr. SPRINGMEYER.—Yes, the evidence of the two Jorys was that the discovery point was at the exact point indicated on their discovery notice; they may have made some mistake in stepping it out as to some distance.

Mr. THATCHER.—Do I understand the location point was here at the point marked "Discovery point Salt Lake No. 3 lode"?

Mr. SPRINGMEYER.—Is that 245 feet?

Mr. THATCHER.—255 feet from the north end, what would be a center monument, if a center monument were located on the north end, it would be the center monument.

Mr. SPRINGMEYER.—All the evidence we have on that point is by the Jorys themselves, who swore that they made a discovery, and stepped it out, and that they stepped out the distance after the discovery was made. [582]

Mr. THATCHER.—May I ask another question. I call your attention to the patent plot, and the mark called "Disc."; is that the point where you claim your discovery?

Mr. SPRINGMEYER.—That is the point on the location notice and the location certificate the discovery was made, according to the testimony of the

(Testimony of Benjamin F. Tibby.)

Jorys. You heard that as well as I did, that is all the evidence I have. It is twenty years since that discovery was made, and they testify they cannot locate the precise point.

The COURT.—I think for the present I will exclude the testimony as to what appeared in the bottom of the shaft, but you can take that up later. My theory is in admitting that sort of testimony it is admitting a discovery that has been made since the placer discovery.

Mr. SPRINGMEYER.—When we take our exceptions I suppose we can take them all together?

The COURT.—Yes.

WITNESS.—So we may fix those samples, may I give the number of the samples?

Mr. SPRINGMEYER.—Yes.

A. Numbers 9 and 10 on my list were taken at my shaft number 9 and the plaintiffs' shaft number 1; and my samples numbers 13, 14, 15 and 16 were taken at my open cut number 14, and the plaintiffs' open cut number 2.

Q. It does not seem to be quite clear whether or not this vein extends into the road which was excavated prior to 1912; will you please state what the fact is regarding that, as to leading into the road or not?

A. Well, as I said a few minutes ago, the vein exposed within my shaft number 9 and the other shaft number 1, extends up the sides of the shaft— [583]

Mr. THATCHER.—If the Court please, I object to it, on the shaft; if Mr. Tibby has seen the vein

(Testimony of Benjamin F. Tibby.)

along the road and can testify that he saw that vein along the road, and its exposure along there, and wants to testify with reference to it, I won't have any objection, but to keep to the shaft I will certainly have to object.

WITNESS.—I just wanted to explain the only point it would be visible at the surface would be the intersection of the plans of the road and the vein as it came up the shaft; I didn't trace it beyond the vertical planes of the shaft.

Mr. THATCHER.—You didn't run a strike at all beyond the shaft? A. I did not.

Mr. SPRINGMEYER.—(Q.) The shaft is built right on the road, sunk right on the road, is it not?

A. It is, yes, sir.

Q. Did you find any indications of a vein right on the road—don't mention anything regarding the shaft.

The COURT.—I thought he had testified to that?

Mr. SPRINGMEYER.—Here was a road, may it please your Honor, and the shaft was sunk down, and he says, as I understand it, that right at the surface the vein appeared on both sides of the shaft.

The Court.—Ask him if it appeared on the surface, then.

Mr. SPRINGMEYER.—(Q.) Did it appear on the surface of the road, Mr. Tibby?

A. It did at the very upper edges of the shaft, yes, sir.

Q. Does the vein run along the road or intersect the road in any way?

(Testimony of Benjamin F. Tibby.)

A. I didn't follow it beyond the boundaries which I have stated.

Q. But it is in the surface of the shaft at the road part? A. It is, yes, sir.

Mr. SPRINGMEYER.—Under your Honor's previous rulings, would that be admissible? [584]

The COURT.—What previous rulings?

Mr. SPRINGMEYER.—If it was a development of the vein exposed prior to the location of these placers, it would be admissible?

The COURT.—I am not aware I made that ruling. I discussed that with you out of the presenec of the jury, and I gave some opinion with reference to it, but I did not intend to state how I should rule, and if I made a mistake and ruled during the course of the trial I did not intend to, because I expected to reserve those matters until I hear your argument and the cases you have to cite.

Mr. SPRINGMEYER.—Then we will simply reserve that matter.

The COURT.—We will reserve that matter, yes.

Mr. SPRINGMEYER.—(Q.) You said you took rock samples from Salt Lake No. 3, did you not?

A. I did take a number from there.

Q. For what purpose did you take those samples?

A. For the purpose of determining the nature of the country rock on the claim.

Q. State from your examination whether or not in the workings that were exposed prior to September, 1912, you found any veins of mineral-bearing rock in place? A. I did, yes, sir.

(Testimony of Benjamin F. Tibby.)

Q. Where were those?

A. Well, the one in the mill bank, if I am not permitted to testify to the other two—the vein which occurs within the open cut, and the one which exists in the shaft, why—

Q. Those are eliminated.

A. Those are eliminated, but that would leave one other than these two of which I have spoken.

Q. Now, going to the Midas claim, referring to point number 25 on your map, did you ever make any examination at that point? A. Yes, sir. [585]

Mr. THATCHER.—(Q.) What does that correspond to on Exhibit "A," Mr. Tibby?

A. I think "21."

Mr. SPRINGMEYER.—(Q.) State what you found there.

A. I found a shaft there four by eight by six feet in depth; and I also have a notation that the soil was only a few inches thick at the top; I went down into that shaft, and examined the four faces which were exposed; I found that there was a vein a foot in thickness cutting through that shaft, in a general north and south direction; I took a number of samples across the north face of the shaft, and a number of samples across the south face of the shaft; I might say that the vein which I found in there cut from that corner of the shaft into this corner of the shaft, traversing it in a diagonal direction.

The COURT.—(Q.) Do you mean that was north and south?

A. I mean that the vein had a general north and

(Testimony of Benjamin F. Tibby.)

south trend, but the shaft in its longest direction, I think would be turned a little the other direction.

Mr. THATCHER.—(Q.) You mean cut from the southwest corner to the northeast corner?

A. From the southwest corner to the northeast corner, yes, sir.

Mr. SPRINGMEYER.—(Q.) What were the characteristics of that material which led you to conclude that it was a vein?

A. Well, for a foot in width in the northeast corner, and a foot in width on the southwest corner, I found a typical vein of quartz; flanking that—flanking the vein in the northeast corner, and over to the west, I found the general country rock; and flanking the vein as it was exposed in the southwest corner, flanking it to the east, I found the same general country rock material, the vein of quartz cutting diagonally across the shaft, and being flanked by the country rock.

Q. As I understand it, then, the vein material was different from [586] the surrounding country rock and different from the walls, is that correct?

A. It was, yes, sir.

Q. Did you take any samples at that point?

A. I did, yes, sir.

Q. Did you have them assayed?

A. I did, yes, sir.

Q. Did you assay them yourself?

A. No, I did not, they were assayed in Salt Lake.

Mr. SPRINGMEYER.—That is under the stipulation, also.

(Testimony of Benjamin F. Tibby.)

Mr. THATCHER.—Under the stipulation.

Mr. SPRINGMEYER.—(Q.) What values did they return, if any?

Mr. THATCHER.—(Q.) How many did you take, and what are the numbers?

A. I took four samples at that point, that is, within the shaft itself—28, 29, 31 and 32.

Q. Skipping 30?

A. Yes; 30 must have been a rock sample, and not for assay.

Mr. SPRINGMEYER.—(Q.) Please state over what width you took each of those samples and give the asasy values of them?

A. Well, 28 and 29 represented the foot of quartz vein in the northeast corner of the shaft; the assay of 28 was a trace of gold, one-tenth of an ounce silver, and one-tenth of one per cent copper, total value 41 cents. Number 29, which was taken at the same place, gave a value of 01 ounces in gold, and 2/10 ounces in silver and .05 of one per cent copper, which would give a total value of 48 cents. Now the two samples which I took in the southwest corner of the shaft gave .05 gold, 2/10 silver, and no copper; total value $1.10.

Q. Over what width was that?

A. That was over a width of one foot.

Q. Now go on to the last. [587]

A. The last one 02 gold, or rather it wasn't 02 gold, it was trace gold, 1/10 ounces silver and 1/10 per cent copper, total value of 41 cents.

Q. Over what width was that?

(Testimony of Benjamin F. Tibby.)

A. That was at the same place. I might add that at that same point I traced this quartz lode for a distance of ten feet to the south of the shaft, and for a distance of 130 feet to the north of the shaft; the quartz lode one foot in thickness being visible at various points by its outcrop, and flanked on each side by the general country rock. I took two or three samples along that lode in its extension beyond the shaft.

Q. Did you find any assays in them?

A. I did, yes, sir.

Q. Did you get any assays in them?

A. I did, yes, sir.

Q. What did you get?

A. My sample number 37, taken ten feet south of the Midas shaft, that is shaft number 25, gave .06 gold, .2 silver and .1 per cent copper of a total value of $1.66. The samples which I took north of the shaft—

Mr. THATCHER.—(Q.) Did I understand you to say that was exposed on the surface?

A. It is exposed on the surface, yes; that sample I just read was taken ten feet south of the shaft and on that surface. At a point fifty feet south of the shaft and on the surface, my sample number 36 gave .02 gold, 2/10 silver, no copper, value fifty cents. At a point 130 feet north of the discovery shaft, and on the surface, my sample number 38 gave .02 gold, 4/10 of an ounce of silver and 2/10 per cent copper or a total of $1.32.

Mr. SPRINGMEYER.—(Q.) I understood you

(Testimony of Benjamin F. Tibby.)

to say that the samples you took on the surface were from the vein?

A. They were, yes, sir.

Q. Did you trace the vein on the surface from the shaft?

A. I did, 130 feet northerly and ten feet southerly.

[588]

Q. In your opinion, Mr. Tibby, state whether or not the exposure in the shaft and the outcrop on the surface constitutes a mineral-bearing vein in place?

A. It does, yes, sir.

JUROR.—Do you know what year this shaft was sunk?

A. No, except from what I have heard, it was sunk prior to Sept., 1913.

Mr. SPRINGMEYER.—It was sunk in 1907, I suppose, General Thatcher, that is correct?

Mr. THATCHER.—That is the testimony of Mr. Jurey.

Mr. SPRINGMEYER.—(Q.) Did you take any rock samples in the vicinity of this shaft?

A. Yes, sir, I took a number of rock samples.

Q. Of the country rock?

A. And of the vein and quartz itself.

Q. In addition to the samples you have testified to? A. Yes.

Q. What was the purpose of taking those rock samples?

A. Well, the same purpose as explained in the other case; I wanted to determine the material which I saw there and took to be a lode was different in

(Testimony of Benjamin F. Tibby.)

character from the enclosing wall rock.

Q. I presume then, from what you say, that you took these samples of the country rock on both claims for the purpose of forming an opinion of the nature of the rock, is that correct? A. It is, yes, sir.

Q. After making the examination of this shaft on the Midas, and taking the samples you have testified to, and tracing the vein, what did you do on the Midas claim?

A. I then proceeded to what I have designated as "42," and marked "22" on Plaintiffs' Exhibit "A," I think it is known as the Midas adit.

Q. What did you find there?

A. I went into the tunnel at that point, and this is what I found [589] there was an open cut leading up to the place where the tunnel got underground twenty feet; then I have a note saying, about seven feet inside of the portal of the tunnel and in the roof, there is a fissure dipping at an angle of about fifteen degrees to the northeast, and striking about right angles to the same; I examined that vein—

The COURT.—Will you give the dip and trend of that vein or fissure?

A. The dip was about fifteen degrees to the north, 60 degrees east; these were magnetic observations, by the way, and not true bearings. I examined the vein on its dip—

Q. Which way was it running; what was the strike of the vein?

A. The strike would be at right angles to the dip, or it would be north 30 degrees west, south 30 degrees east.

(Testimony of Benjamin F. Tibby.)

Mr. THATCHER.—Can you mark on the map with a little line, so as to give the jury an idea of what the strike of that vein was?

A. I have attempted to do so by a yellow line.

Q. Is that the strike of it?

A. That is the strike of it, yes, sir; you can see the strike is about parallel to that little drift which runs off from the main tunnel.

The COURT.—Will you move your pencil along that yellow line.

A. The pencil now lies along the strike, approximately.

JUROR.—Did you find it in the roof?

A. I found it in the roof; as I went in it was exposed on both sides for a distanec of some twenty feet, until it dipped into the floor of the tunnel; this was a very well defined vein, filled with soft porous and crushed material.

Mr. SPRINGMEYER —(Q.) Was it of different character from the surrounding country rock, Mr. Tibby?

A. Yes, sir.

Q. How far did you trace it approximately?

A. Well, from the place where it appeared in the roof to the [590] place where it disappeared in the floor of the tunnel, was approximately some twenty feet; it had a very flat dip, of course, and ran in quite a distance before it disappeared in the floor.

Q. In your opinion, does that constitute a mineral-bearing ledge in place? A. It does, yes, sir.

(Testimony of Benjamin F. Tibby.)

Q. Did you take any samples from it?

A. Yes, I took quite a number of samples from that place.

Q. Describe to the jury what method you used in sampling that vein in the tunnel.

A. Since that vein appeared to be quite well defined and exposed there for some extent, I followed a more or less systematic plan of sampling; I took a sample on the vein, both sides of the drift, just about opposite where that little drift runs in here.

Mr. THATCHER.—(Q.) You say you sampled this in the drift itself?

A. No, not in the middle drift; we may call this long part the adit portion, and the other the drift. The first two samples I took, numbers 42 and 50, were taken in the main adit, just before we came to that little drift of ten feet; those were sampled across the full width of the vein, by digging a uniformly deep and uniformly wide channel; I took one sample right at the very face of the little short drift running off the main adit.

Q. Where did you say you sampled that?

A. Right in the face.

Mr. THATCHER.—I object to the testimony as to the sample taken in the south drift in the face, or any other part of it, upon the ground it was not on the ground at the time the placer title was initiated.

Mr. SPRINGMEYER.—I understand from the testimony of Mr. Jurey there has been no work done at that point since.

The COURT.—When was that drift run? [591]

(Testimony of Benjamin F. Tibby.)

Mr. SPRINGMEYER.—That drift was run in 1912.

Mr. THATCHER.—The tunnel was run in 1912, but the drift was not. He has testified that he has taken it and we will let it go until we find out.

Mr. SPRINGMEYER.—(Q.) Go to the next sample, Mr. Tibby.

A. My sample number 44 was the one taken in the face there; my 42 was taken here, and my number 50 over here (indicating on map Exhibit No. 5). Now my 49 was taken right here to correspond with this sample in the face here; my 46 was taken right here at that point; my 47 was taken at the point where the vein dipped into the floor; and my number 48 was taken right across so; they were taken in pairs, here, here and here (indicating); and I had number 43 in that little drift and number 45 in that little drift, so altogether there were nine samples taken on that vein.

Q. Passing for the time being the matter of samples taken in the small drift—

Mr. THATCHER.—That is not all, I am not through yet. All the samples beyond a certain point here I want to designate. Will you measure that, how far it is.

WITNESS.—The farthest samples that I took on the vein were twenty-seven feet in.

Q. From what?

A. From what we would term the portal of the tunnel; and that would be twenty-seven feet in from the portal of the tunnel; the portal of the tunnel, this

(Testimony of Benjamin F. Tibby.)

place not marked, the crook or turn in the tunnel, was some distance from there; it would be really more after that fashion. (Indicating on defendant's map, Exhibit No. 5.)

Q. Now you can go ahead with samples 50 and 49. I will reserve 47 and 48 until I look at the testimony. You can ask him with reference to 49 and 50, 42 and 46. [592]

The COURT.—47, 48, 44, 45 and 43 are reserved,

Mr. SPRINGMEYER.—I understand if we are correct that work was done prior to 1913, you will have no objection?

Mr. THATCHER.—Yes, if my recollection is incorrect on that I will withdraw my objection.

Mr. SPRINGMEYER.—(Q.) You said your farthest samples were taken thirty-seven feet in?

A. No, twenty-seven.

Q. Now go to the samples concerning which no objection is made.

A. Sample No. 42 gave 06 gold, 7.8 ounces in silver and one per cent in copper, a total value of $8.70. Number 46 gave 08 in gold, 8/10 of an ounce of silver, .45 per cent copper, total value $3.62. Number 49, 06 gold, 5/10 silver, 4/10 per cent copper, total value $2.89. Sample number 50, 07 gold, one ounce in silver, .85 per cent copper, total value $4.96.

Q. Over what width did you take these samples?

A. Well, the average width of the vein as a whole was nine inches.

Q. That is the part of the vein sampled by you?

A. That would be the average width; some of the

(Testimony of Benjamin F. Tibby.)

places were a foot in thickness, and some a little less, but they averaged nine inches.

Q. Now, in your opinion does that constitute a mineral-bearing vein or lode in place?

A. It certainly does, yes sir.

Q. After making the examination at that point did you take any further samples of rock.

A. Yes, sir, following my usual procedure, I took some rock samples at the same working, and in this vicinity.

Q. Near the tunnel or within the tunnel?

A. Both within and near it.

Q. After taking those samples and leaving the tunnel, where did you go in the course of your examination? [593]

A. I went to a point marked "53" on my map and number "23" on Plaintiffs' Exhibit "A."

The COURT.—(Q.) Was that on the Evening Star?

A. Well, my map shows it to be on the Evening Star, but the plaintiffs' map shows it to be on the Midas. I might say, as I explained when I qualified this map, this one particular point, the position of it, was determined from the center side line of the Midas and Evening Star lodes; I thought that I was correct in placing it on the Evening Star lode, but I would not want to place the accuracy of that against Mr. Moran's survey.

Q. Mr. Liddell stated also that you were incorrect upon that point, did he not?

A. I don't remember I am sure.

(Testimony of Benjamin F. Tibby.)

Mr. THATCHER.—Now you testified with reference to the cut.

WITNESS.—As to the cut marked "23."

Mr. THATCHER.—I will have to object to that on the same ground; that cut was made since. He can tell what he did there.

Mr. SPRINGMEYER.—(Q.) Don't state what you saw, but just what you did.

A. I took a sample of the vein exposed, and a sample of the country rock; my sample there is number 53.

The COURT.—Only one sample?

A. Just one sample across that one foot of width.

Mr. SPRINGMEYER.—(Q.) What is the number of the sample? A. Fifty-three.

Q. Did you take any other sample at that point?

A. No more assay samples; I took a rock sample at that point, and others as I went along, at various points.

Q. After leaving the point described, where did you go?

A. I then went to a point marked "60" on my map and number "20" on plaintiffs' Exhibit "A"; that I think is what we call the big cut on the Evening Star lode, it is the one with the shaft sunk [594] in the floor.

Mr. THATCHER.—(Q.) The big cut?

A. The big cut.

Mr. SPRINGMEYER.—(Q.) What did you find there?

A. Well, there was a cut there with a shaft in the

(Testimony of Benjamin F. Tibby.)

floor, and a drift running easterly in the same direction as the main cut; I took a number of samples for assay and rock determination from the same point.

Mr. THATCHER.—(Q.) Well, from where?

A. I took samples both in the cut above the floor and down the shaft and in the little tunnel.

Q. Underneath? A. Underneath what?

Q. What would be called the first level?

A. What would called the first level, yes. Do I understand I am precluded again from stating anything below the floor?

Mr. THATCHER.—I object to anything below the floor of the cut.

A. I can give the numbers of the samples I took below the floor.

The COURT.—Just give those.

A. Those samples which were taken below were numbers 66, 67 and 68; those were taken in the vein below the floor of the open cut. I took several other samples above the floor of the cut. If I may represent that the situation is something like this (draws on blackboard); you come in the cut here; there is a shaft down here with a little drift here; the cut is open beyond the point of that shaft, so in crossing this shaft there is several feet to stand on in there. Now my sample number six was taken at what we would call the face of the cut.

The COURT.—I thought you said 66 was taken below the floor?

A. I should say 62; 62 was taken there; 61 and 60 were taken on the two sides of the cut beyond the

(Testimony of Benjamin F. Tibby.)

shaft; 64 and 65 were taken from the sides of the cut, nearer the entrance than the shaft. [595] 60 and 61 were taken there; 64 and 65 were taken there (indicating). The results of those assays; number 62, 02 gold, 2/10 of an ounce of silver, and .05 copper, total value 68 cents. 61, .02 gold, 3/10 silver, 2/10 copper, total value $1.27. Number 60, .02 gold. It appears that numbers 64 and 65 were not assayed, but were used for rock samples.

Mr. SPRINGMEYER.—(Q.) Is that all the examination you made of the conditions at that point?

A. No, I made some surface examinations there; I traced this same lode for a short distance northerly and a short distance southerly from that point.

Q. About how far northerly and southerly?

A. Well, to the north, perhaps some—

Q. Well, can you indicate on the map by the points?

A. Well, I represented the continuation to the north by the broad yellow line running to the north; to the south it was traced intermittently clear to the south end line of the Evening Star Lode.

Q. Do I understand you to say in preparing this map, the broad yellow lines are indicative or represent lodes or veins?

A. That is the intention, yes, sir.

Q. That is the scheme of the map with regard to all three claims. A. It is; yes, sir.

Q. State whether or not in your opinion the exposure at the point you have designated from which

(Testimony of Benjamin F. Tibby.)

you took these samples was mineral-bearing vein or lode in place?

A. I would say that it was, since it was a material different from the wall rocks enclosed therein, and carrying appreciable values in the metals.

Q. Did you examine any workings at or near the Midas or Evening Star claims?

A. Well, there were two other workings that I examined; there is what I have marked "69" on my map, and number "24" on plaintiff's map. [596]

Q. What did you find at the first of those points?

A. Well, I was about to say that I also examined another cut or drift without the boundaries of the Evening Star Lode, and a continuation of the same lode. Now with reference to this point 69 on my map, which I consider to be a continuation of what was shown here, I took a sample in the face of that—my sample number 69.

Q. Was that on the boundaries of the claim?

A. No, that was somewhat north of the boundary, and within the claim.

Mr. THATCHER.—Sample sixty-nine?

A. Yes.

Q. Where did you take that from?

A. I took that at a point about even with my shoulders.

Q. About even with your shoulders? A. Yes.

Q. Up and down? A. No, across.

Q. About even with your shoulders—that is enough, go ahead.

A. That vein was identical in material, except for

(Testimony of Benjamin F. Tibby.)

being somewhat more altered by its more exposed position—the material I found there in point number 60. The assay of that was 02 gold, half ounce in silver and .05 copper, giving a total value of 83 cents. The working which I examined just without the boundary of the Evening Star Lode, was driven in a southerly direction along the same outcrop of quartz material.

Mr. SPRINGMEYER.—(Q.) What values, if any, did you get from that sample?

A. I took no samples without the boundaries of the claim; I simply went in there to see if conditions there were what they were within the claim.

Q. Is this a correct representation of the workings outside the boundaries of the claim, of which you testified you made an examination?

A. It is, yes, sir; that is the tunnel driven in a southerly direction along this same lode, and south of the south [597] end line of the Evening Star.

Q. Did you trace the vein or lode to the point at which that tunnel is driven on the claim adjoining the Evening Star?

A. As I have stated, intermittently at various points, and I have a notation here which says that the surface soil along this line about where I have designated the lode, is of a different character from the general soil of the country adjoining; I don't see the note which I have here, but I remember that the soil was generally lighter in appearance.

Mr. SPRINGMEYER.—We offer this photograph

(Testimony of Benjamin F. Tibby.)

which I have shown to the witness in evidence. Any objection?

Mr. THATCHER.—No, I don't object to it.

(The photograph is admitted in evidence and marked Defendant's Exhibit No. 21.)

JUROR.—What is the name of that claim?

A. I have no knowledge of the name of it; I think it belongs to some one other than the defendant in this case. I have no knowledge except that the work was driven on the same lode; it is pretty well up the hill, I may say.

Mr. SPRINGMEYER.—(Q.) This work is outside of the claim, but I understand you to say it is on the lode which you traced outside of the Evening Star? A. Yes, sir.

Q. That tunnel is on the vein or lode?

A. It is, yes, sir.

The COURT.—(Q.) How far is that from the south end line of the Evening Star?

My note shows it is about 250 feet, of course those distances are very—

Mr. THATCHER.—What is that?

A. I have noted about 250 feet—no, I have 250 feet from the Evening Star discovery. Of course those distances were merely distances that I estimated, and it may be as much as a hundred [598] feet in difference; four inches would bring it in this neighborhood (indicating on map, Exhibit No. 5). Now, as I say, that may be correct within possibly a hundred feet; I simply stood here and looked back, and estimated that it was that distance away.

(Testimony of Benjamin F. Tibby.)

Mr. SPRINGMEYER.—(Q.) As I understand it, Mr. Tibby, you say in your opinion this a mineralized vein or lode in place? A. It is, yes, sir.

Q. Traced as you have indicated, from the open cut on the Evening Star to the point on an adjoining claim, where the tunnel is run, the tunnel being represented by the photograph? A. Yes, sir.

Q. Now referring to the open cut on the Evening Star, number 60 on Defendant's Exhibit No. 5, and number 20 on Plaintiffs' Exhibit "A," in your opinion is that a quartzite or not?

A. It certainly is not a quartzite.

Q. You say you took petrological samples of rock, country rock, in various parts of these three claims?

A. Yes, sir.

Mr. THATCHER.—What kind of samples?

A. Rock samples.

Mr. SPRINGMEYER.—(Q.) What tests did you make to determine the character of the rock?

A. Well, you mean the tests of this Evening Star quartz, I take it?

Q. Well, there yes?

A. I made both chemical and microscopic tests, as well as some physical tests, to determine the hardness and specific gravity.

Q. Did you determine the hardness of the rock at that point? A. I did, yes, sir.

Q. You said you made chemical tests, also?

A. Yes.

Q. What is the chemical composition of quartzite?

A. Well, quartzite is composed of quartz or silica,

(Testimony of Benjamin F. Tibby.)

chemically [599] it would be silica.

Q. And what is the composition of vein quartz?

The COURT.—Of what kind of quartz?

Mr. SPRINGMEYER.—Vein quartz.

A. Vein quartz is composed of silica, the same as quartzite.

Q. And opal is also composed of silica, is it not?

A. It is; the mineral opal is the same thing; and when I speak of opal here, I don't mean the gem opal, but the vein filling opal, it is composed of the same material—silica.

Q. You say that the three are composed of the same material, opal, vein quartz and quartzite?

A. They are, yes, sir.

Q. What is the difference between the three?

A. Well, the essential difference of course, first of all, is the method of formation; they also have different characteristics under the microscope, and they have different characteristics when treated with certain kinds of acids and alkalies. The quartzite is material which is laid down in seas or lakes; it is the ordinary sand of the river bottoms, which has been cemented by great pressure which has been put on top of it. The vein quartz is a crystalline material that has been deposited from solution, and it is the common constitutent of gold quartz veins. The opaline variety of vein quartz, if we may so term it, is of the same compositon as the vein quartz, but has important differences, both in their actions with chemicals, and as examined under the miscroscope.

Q. Did you apply tests to determine the character

(Testimony of Benjamin F. Tibby.)

of the silica, what you say is the vein or lode?

A. I did, yes, sir.

Q. What tests did you apply?

A. I weighed the material—determined its specific gravity, in other words.

JUROR.—What is the standard? [600]

A. The standard is water with a weight of one; this material had a comparative weight of about 2.2; the vein quartz would have a specific gravity slightly higher than that. I then took a sample of this and boiled it in what we call a caustic alkali, only the opaline variety of quartz is soluble in that material; quartzite, or the typical vein quartz, is not soluble in caustice alkali. The result of the test was that ninety per cent of this material went in solution, proving that this material was not of sedimentary origin, of quartzite, but was material that had been deposited from hot waters at some time or other.

Q. Did you make any other tests or examinations?

A. I made certain microscopic tests, by taking a piece of the rock and grinding it down to the fineness of about 1/750 part of an inch; practically every rock is transparent under the microscope, and using the proper kind of a microscope; various minerals display certain fixed characteristics, so when you get a thin section of this and put it under the microscope, there is no difficulty in telling exactly what you have under there.

Q. Did you make slides of various specimens of rock, and country rock and other rock at this point you have been testifying about?

(Testimony of Benjamin F. Tibby.)

A. I did, I made examinations of this particular vein quartz, of the vein quartz in the Midas lode, in various and numerous places within the boundaries of these three claims, and right adjacent thereto.

Q. Will you examine these photographs, and see whether they are photographs that you made of those microscopic examinations? (Hands to witness.)

A. They are, yes, sir.

Q. Please state from what parts they were taken, and whether or not they accurately represent the material.

A. These two represent what I have termed the Evening Star vein [601] quartz, and the other three are typical of the country rock.

Mr. SPRINGMEYER.—We offer each of these in evidence.

Mr. THATCHER.—No objection.

(Photographs are admitted in evidence and marked Defendant's Exhibits Nos. 22, 23, 24, 25 and 26.)

Mr. SPRINGMEYER.—(Q.) Will you please explain to the Court and jury the reasons for arriving at your conclusions and deductions in each of the instances in which you made the microscopic examination?

A. These two photographs are pictures of what was visible under the microscope; and I want to say here that the examination of rocks under the microscope is not a purely scientific method of determining what we have; it has a very practical value, for the reason that we apply a hand lens to a rock and

(Testimony of Benjamin F. Tibby.)

see it a little better, we can apply this method of examination, and determine things that are not otherwise visible. These two photographs which are practically identical, represent the vein quartz material as shown in his broad yellow line (indicating on Defendant's Map Exhibit No. 5); under the microscope the greater part of the material is almost black; now that is characteristic of only one kind of quartz; it is not characteristic of a quartzite, or a rock laid down in the sea bottom or lake bottom; it is typical of material deposited from hot solutions, therefore, the ordinary vein deposition. These little light colored streaks running through here, and shown on both the photographs, are streaks of what we have called secondary quartz, or typical vein quartz, representing in character the same material which is disclosed in the Midas shaft; and you can see the very characteristic difference between the typical vein quartz and this opal variety surrounding it; no such condition as that could exist in sedimentary rock. [602] Therefore, I have come to the conclusion that that material was deposited there from a solution of some kind coming up through a fissure or crack in the general country rock.

Q. Did you make any microscopic examinations of the specimens of country rock you took from various parts of these three claims?

A. I did, I made a number of slides, some fifty in all, to determine the characteristics of the general country rock. These three photographs which I have (Exhibits 24, 25 and 26), are representative

(Testimony of Benjamin F. Tibby.)

of the examinations covering those fifty slides. The same rule applies in studying a rock of this kind as it does in studying this vein quartz. This material which I have marked in green here, and designated as alaskite, is an igneous rock; the term "Alaskite" I might say, is for all practical purposes the same as rhyolite; it is a material which has been welled up in the center of the earth in a molten or fluid condition, and later has cooled. Now these photographs which I have here are representative of that material; and prove conclusively that it is not a quartzite or sedimentary rock; it is an igneous rock. We have here these light spaces, that is the quartz; now that is the same kind of quartz which you see in a quartzite, and as you can see from other photographs, that material is essentially different from this. The whole characteristic of this rock as viewed under the miscroscope is not a sedimentary rock. There is another mineral in there, which I have marked "S," and which we have termed alaskite, that is simply an alteration production of the other minerals, what we call feldspar, which is a common constituent of rhyolites, and this rock I have termed alaskite. This rock here has been broken, and the material which formed this vein or lode, and this vein or lode, has occupied other and very minor fractures in numerous places, or little veinlets, as we might term them, varying in thickness from a sheet of [603] paper up to perhaps an inch or two, but hardly warranting the term vein applied to them. Now this is a sample

(Testimony of Benjamin F. Tibby.)

of country rock you can see running in a straight line across there—a veinlet of that vein quartz which came from the same source as did this, showing that there has been an action there later which produced those veins. The other photograph here shows a little broader zone of the same thing, but the other limit if it is not discernible, since it is without the boundaries of the photograph. This material is essentially an igneous rock, with these quartz seams in it, and in some cases these quartz seams are of sufficient size to be termed a vein or lode. I might add that just below point 14, and exposed on the surface, there was a veinlet of this kind, about an inch in thickness, which I followed for a distance of thirty or forty feet right in the solid rock there; I made slides of both the country rock and the quartz material within it, showing that they were essentially different in every respect. There were certain phases which could be seen on the ground which bore that out, since that little quartz seam of an inch or so in thickness had cooled within the rock, or solidified within the rock, and if you would hit it with a hammer, you could break out a little tablet of it, perhaps half the size of this book.

Q. Now the photographs in the order you have testified to them are what?

A. This first one is what we call the altered alaskite or the altered igneous rock, had been broken down.

Q. That will be exhibit number 24.

A. The next one, number 25, displays slightly dif-

(Testimony of Benjamin F. Tibby.)

ferent characteristics, since it has been subject to this salicification, or the introduction of the secondary seam of quartz. The same is true of this one; but as I say, the characteristics of the igneous rock are unmistakable. [604]

JUROR.—Can you tell the vein quartz from quartzite with the naked eye?

A. No, you cannot. Very often if the quartzite happens to be of such a fine grain, that you can't see it, a very fine sand, after it has consolidated the particles are less readily seen than before, and you can't determine by simply looking at it whether you have a quartzite or a vein quartz; and so we have to resort to the microscope again to tell. In quartzite we find numerous rounded particles, more or less rounded, which have been cemented together through the places where they don't touch by other quartz. Now, in the vein quartz we find this condition of affairs (draws on blackboard); suppose that is the width of the vein; you find this more or less honeycomb structure, as we term it, where the quartz particles are irregular, and have settled out from a solution of some kind, just the same as salt crystals would solidify out from water. I might say where the cement material between the particles is quartz, there can be no mistake under the microscope, because this material which fills in the openings takes on certain characteristics possessed by the grain of sand right next to it, and it is very easy to determine just what we have. Of course in the igneous rock, if we are determining the presence of quartz in there, there are

(Testimony of Benjamin F. Tibby.)

other minerals than quartz in sufficient quantity to tell very readily what we have.

Mr. SPRINGMEYER.—You have been testifying to the microscopic photographs you made in the order they are marked as exhibits, have you not?

A. I think so, yes, sir.

(The Court admonishes the jury, and at 5:15 P. M. an adjournment is taken until to-morrow, June 1, 1915, at 9 o'clock A. M.) [605]

Tuesday, June 1, 1915.

Court convened, 9 o'clock A. M.

(All parties present.)

Direct Examination of Mr. BENJAMIN F. TIBBY, Resumed.

Mr. SPRINGMEYER.—(Q.) With reference to the specimens of rock of which you made these microscopic tests, would it be possible without making such tests, or similar tests, to determine just what the material was? A. It would not. no, sir.

Q. Why?

A. Well, because there are certain characteristics that are not observable unless those tests are made, the characteristics which I brought out yesterday.

Q. Any field tests then which might be made would be insufficient to definitely determine the character of the rock, is that true?

A. That is true, yes, sir.

Q. Did you say that you found any quartzite at or near any of the claims in question?

A. Yes, I found quartzite flanking the claims to the west, and forming the backbone of the hill to the

(Testimony of Benjamin F. Tibby.)

west from the claims.

Q. Have you indicated the line between the quartzite and the alaskite on the map?

A. I have shown the quartzite in red and the igneous rock in green; the line of demarkation as I have shown it there, is not absolutely fixed, since it is hard to trace the exact line, but that represents it approximately.

Q. Is there any quartzite float on the part where there is alaskite?

A. Well, not up on that sidehill.

Q. And what do you designate the general country rock on these three claims?

A. Well, I have termed it alaskite, and as I explained yesterday, for practical purposes we may term it rhyolite. [606]

Q. Then that is the country rock on the Midas, the Evening Star and the Salt Lake No. 3 claims?

A. It is, yes, sir.

Q. State whether that is igneous, sedimentary or metamorphic rock.

A. Well, it is an igneous rock.

JUROR.—What do you call metamorphic rock?

A. Metamorphic rock is rock that has been altered, a sedimentary rock that has been altered, therefore a quartzite is a metamorphic rock, a metamorphosed sandstone, and marble is a metamorphosed limestone; metamorphism simply meaning a changed condition; this rock is what we call metamorphosed in that some of the constituent minerals have been altered.

(Testimony of Benjamin F. Tibby.)

Mr. SPRINGMEYER.—(Q.) Did you find any minerals in alaskite which could not occur in the quartzite?

A. Well, the constituent minerals of the alaskite were very definite and fixed, the rock as I have designated it.

Q. Did you find any trace of biotite?

A. Near the mill I did, yes, sir.

Q. Is it possible for biotite to occur in quartzite?

A. Only in exceedingly small quantities, as an impurity of some kind.

JUROR.—What is biotite? A. Mica.

Mr. SPRINGMEYER.—(Q.) It is one of the micas, is it not?

A. One of the micas, common mica, black mica.

Q. Why can that not occur in quartzite?

A. Well, because the mica is a primary constitutent of igneous rocks, and that is the source of it.

Q. And if there were any changes, it woud be changed so that quartzite which is an altered rock, would change the biotite, is that correct?

A. We expect to find no biotite in quartzite.

Q. Did you examine the large piece of rock offered in evidence by plaintiffs in cross-examination of Mr. Liddell? [607] A. Yes, sir.

Q. What, in your opinion, is that rock?

A. Well, from the evidence stating where the rock came from, and from my examination of it, I would say it is the same general country rock that I have designated as alaskite.

Q. Does quartzite scratch with a knife?

(Testimony of Benjamin F. Tibby.)

A. It does not, no, sir.

Q. Does that rock scratch with a knife?

A. In places it does, yes, sir.

Q. Did you find any other character of rock anywhere on these claims?

A. Yes, I found an intrusion of what I have marked quartz diorite, southeasterly from the mill; this is another igneous rock, by the way, which came in later than this one; this rock is very closely connected with the copper deposits of this group that are situated without the boundaries of this claim.

Q. Has that any geological importance?

A. Well, as I stated a moment ago, this rock is no doubt connected very closely with the copper deposits which occur in the claims right adjacent, and unquestionably has some genetic connection with the copper veins which are included within the north end of the Salt Lake No. 3.

Q. You said, I believe, after making this careful study you concluded that there were mineral-bearing veins or lodes on each of those three claims?

A. I did, yes, sir.

Q. And the various veins which you described are the ones you refer to? A. Yes, sir.

Q. Will you please state for the benefit of the Court and jury, in as few simple words as you can, just exactly the times when these different formations occurred, as to points of time—the quartzite, the alaskite and the diorite? [608]

A. Well, of course very naturally the quartzite was laid down first in the form of a sandstone; some

(Testimony of Benjamin F. Tibby.)

distance away on top of this quartzite, are some limestone beds, but they are not within the area shown here; following the laying down of this sandstone, which was later turned into quartzite, metamorphosed into quartzite, the alaskite came in, lifted the quartzite beds up, tipping them to the west; following this was this intrusion of quartz diorite, and likewise the formation of these quartz veins; the relative time of the quartz diorite and the quartz veins could not be stated, but they were both later than the alaskite, which lifted the quartzite beds up and tipped them to the west.

Q. Is that the explanation geologically, that the quartzite beds dip to the west? A. Yes, it is.

Q. Did you say in any of the samples you took, there were appreciable amounts of copper, or not?

A. I did, I found appreciable amounts in practically all the samples which I took.

Q. Does that indicate anything with reference to the outcrops?

A. Well, only this, that copper is very soluble mineral, and if we get appreciable amounts very close to the surface, where the weathering has been extreme, we could expect to find even greater quantities possibly a little lower down, since those minerals are taken into solution, and carried down during the process of weathering.

Q. That is more soluble than gold and silver is the outcrops, is it? A. Very much so.

Q. Do you say if there is only a slight trace of it in the outcrop that it may lead to large bodies of min-

(Testimony of Benjamin F. Tibby.)

eral in the depth of the vein?

A. Oh, yes, in many cases the presence of small amounts of copper in an outcrop is no basis for what might be found below; and in lots of deposits small amounts of copper in an outcrop [609] are developed into large copper bodies down below, because, as I stated, the copper is taken away and carried down.

Q. Is that the case with other minerals, also?

A. Some other minerals, but not with the extent of copper; the gold and silver are not easily removed.

Q. Can you give any illustration of where in the depth of a vein the values increased below the outcrop, which showed only small values?

A. Well, that same condition is very typical of the veins at Butte, where the copper values in the outcrop were practically nothing, and the early mining was done for gold and silver; later these copper deposits of great size were discovered in prospecting and mining the gold and silver in the upper part of the outcrop.

JUROR.—Is that formation the same as this?

A. No, the Butte formation consists of veins in granite, an igneous rock, by the way.

Mr. SPRINGMEYER.—(Q.) Some of those mines, for instance the Mountain View, went over five hundred feet in depth before they found anything, did they not?

A. I don't recall the exact depth, but I know it was two hundred feet or more.

Q. Please state the theory of placer deposits, in so

(Testimony of Benjamin F. Tibby.)

far as applicable to the situation in Copper Canyon.

A. Well, the origin of the placer gold is from veins or lodes due to the weathering away of these gold-bearing veins or lodes; the gold is gradually transported down the hillside and into the stream bottom, and there is carried further still, and caught in the irregularities of the bedrock, so that all the placer gold comes from veins or lodes originally.

Q. Is that the condition in Copper Canyon? [610]

A. I think the placer gold there originated in the gold-bearing lodes on the hillsides adjacent to the claim.

Q. Now, with reference to a vein coming to the surface, does it always show as a bold outcropping?

A. No, it does not; we usually think of a vein outcropping as standing above the general surface of the ground; as a matter of fact, where the vein material is softer than the surrounding country rock, the outcrop, if we may so call it, is evidenced by a depression other than an outcrop in the ground.

Q. Now, one thing more; in shipping gold to smelters what is the minimum amount of gold paid for?

A. Well, the amount varies somewhat with the particular contract which a man might have, but amounts as small as fifty cents are paid for, along with the other metal which is shipped.

JUROR.—You mean silver, don't you?

A. No, I mean gold, that is, .025 is frequently paid for in shipments containing other metal.

Mr. SPRINGMEYER.—I want to see what Mr. Jurey has to say regarding the length of the tunnel

or adit on the Midas claim, in an endeavor to enable General Thatcher to decide what to do with reference to the one sample taken. Mr. Jurey, will you take the stand, please?

The COURT.—Are you through with this witness?

Mr. SPRINGMEYER.—I am through with him except for the purpose of offering that one sample. [611]

**Testimony of Joseph Jurey, for Defendant (Recalled).**

Mr. JOSEPH JUREY, recalled for further examination by defendant, testified as follows:

Mr. SPRINGMEYER.—(Q.) Mr. Jurey, you testified I believe, that you had done work on the tunnel or adit on the Midas claim, described as number 41 on Defendant's Exhibit Number 5, and as number 22 on Plaintiffs' Exhibit "A." A. Yes, sir.

Q. When did you first do work on that tunnel?

A. 1912.

Q. How much work did you do at that time?

A. We ran the tunnel about forty feet.

Q. At that time? A. Yes, sir.

Q. Did you do any drifting? A. No, sir.

Q. On the vein at that time?

A. Oh, yes, on the vein, yes.

Q. Did you drift on the vein that year?

A. That year, yes, sir.

Q. You mean that is a straight tunnel?

A. Yes, that straight tunnel.

Q. Did you run any drift from the tunnel?

A. No.

(Testimony of Joseph Jurey.)

Q. You did not? A. Not in 1912, no.

Q. When was that run?

A. That was run in 1914.

Mr. SPRINGMEYER.—That is all.

Cross-examination.

Mr. THATCHER.—(Q.) You said it was in 40 feet? A. Forty feet.

Q. Was that all tunnel underground, or was that the cut and tunnel, too?

A. The tunnel was in about 40 feet; the cut was there before we started in 1912.

Q. The cut was there before you started?

A. Yes, we ran it forty feet.

Q. Ran it 40 feet in 1912? A. In 1912, yes.

Mr. THATCHER.—That is all.

Mr. SPRINGMEYER.—On that showing I think two of Mr. Tibby's assays may be admitted in evidence.

Mr. THATCHER.—Forty-seven and forty-eight. [612]

**Testimony of Benjamin F. Tibby, for Defendant (Recalled).**

Mr. BENJAMIN F. TIBBY, resuming in direct examination:

Mr. SPRINGMEYER.—(Q.) Will you please state where these samples were taken, how many feet from the portal of the adit?

Mr. THATCHER.—He has already testified to that.

Mr. SPRINGMEYER.—Just give the sample.

A. I took samples number 47 and 48 near the floor

(Testimony of Benjamin F. Tibby.)

of the drift, just about where the vein would disappear, or rather the long tunnel, just about the point where the vein would disappear into the floor; I took them on the sides, however, and not in the floor. Sample number 47, taken on the right-hand side of the vein gave .14 in gold, 2.8 ounces in silver, .55 in copper, total value $6.18, over a width of nine inches. Sample number 48 taken on the left-hand side, gave .04 gold, 1.6 ounces in silver, and .65 per cent copper, a total value of $3.94, over a width of about nine inches.

Mr. SPRINGMEYER.—When the matter is decided as to what assays are admitted in evidence we will have copies made of them. You may cross-examine.

Cross-examination.

Mr. THATCHER.—(Q.) How many times did you enlarge these slides—are they marked on the slides themselves?

A. They are marked on the slides, one hundred and twenty, I think.

Q. One hundred and twenty? A. Yes.

Q. That was with a microscope?

A. It was, yes, sir.

Q. In order to determine the character of the rocks, and the difference between the two, it was necessary to use a microscope, as I understand?

A. It was, yes.

Q. That could not be done with the ordinary field-glass, such as a prospector might use in the field?

A. It could not.

Mr. THATCHER.—That is all. [613]

**Testimony of Joseph Ralph, for Defendant (Recalled).**

Mr. JOSEPH RALPH, the defendant, called for further examination, testified as follows:

Mr. SPRINGMEYER.—(Q.) Mr. Ralph, where do you live? A. Salt Lake City.

Q. Of what place are you a resident?

A. Salt Lake City.

Q. Of what country are you a citizen?

A. The United States.

Q. How long have you been a citizen of the United States? A. About twenty-one years.

Q. In what year did you become a citizen?

A. I think it was '96, or '95, I am not sure.

Q. Have you your naturalization papers?

A. No.

Q. Where are they?

A. It is hard to say where they are.

Q. When did you last have them?

A. I don't know, the last time that I had them I had a certified copy sent me to Russia in 1909, for some reason, and I don't even know where the certified copy is now.

Q. Were you a resident and citizen of the State of Utah during the year 1914? A. Yes.

Q. What is your occupation or profession?

A. Mining engineer.

Q. State to the Court and jury what your experience and training has been.

A. I came to the United States in 1890; I was born

(Testimony of Joseph Ralph.)

in Cornwall, England, and I mined in Michigan, the Black Hills, in Butte, Montana, in the Coeur d'Alenes in Idaho, on the Mother Lode in California; in the San Juan District of Colorado, the Bradshaw Districts of Arizona, and several other places, starting from shovelling and mucking to mine superintendency. In 1903 I went to London, since that time my positions have been wholly executive, acting as consulting engineer in London, and working out [614] from London as a consulting engineer, and also in charge of actual works in the field, in which duties I was general manager of the Kjoli Mines in Norway for two years or two years and a half, I forget now which; I was in Russia on two occasions, and I was the technical adviser for the board of the Russian Collieries, Limited, in which capacity I was instructed to organize a central working shaft for the Russian Collieries, Limited, in the Donetz Mining District in Southern Russia, in the Ekaterinoslav Province. During my term with the Russian Collieries, Limited, I acted as adviser to the board in conjunction with other consulting duties in London; and, as I say, I made two visits to Russia, one of which I think kept me there six or eight months, personally superintending. Another of my foreign experiences, during my consulting duties, I went to the Gold Coast, West Coast of Africa, where I had charge of the Prestea Block A Mine; that is the biggest mine in the west coast of Africa, where there is a vein nine feet wide which will assay eleven pennyweights in gold, and where for five thousand feet there is not a break, and is worked

(Testimony of Joseph Ralph.)

now by four working shafts, all on the same lode, without a single fault or break. Another of my foreign experiences was in the Northern Shan States in upper Burmah, where I had similar duties in connection with a mine which is called the Bawdin Mine. It is now owned by the Burmah Corporation, Limited; at that time I was sent there by the firm of Bewick Moring Company, consulting engineers of London, England. And during my consulting experiences in London, I was adviser to various interests, which included the heaviest shareholders in the Glasgow Western Company, and I was called in on several occasions, and was finally sent out here to make an examination.

Q. With what mines were you connected in the United States prior to your going to England in 1903? [615]

A. The last mine that I had charge of was the Silver Ledge Mine in the San Juan District in Colorado.

Q. Do you recall the names of any of the other properties on which you worked, or with which you were connected, prior to 1903?

A. To go back to a great number of mines; I worked first in the coal mines; I worked in the old Norway mine in Norway, Michigan, the general manager of it was a man by the name of Hoskins; in the Black Hills, I worked in the Homestake Mine; I worked there in the Homestake Mine in 1890 or 1891, in '91, I believe, where I was used as a hammer-man,

(Testimony of Joseph Ralph.)

when there wasn't a single Burly drill in the Homestake Mine. In Butte, Montana, I worked in the Silver Bow and in the Gray Rock and in the Moose and the Colusa, and the Original, and a number of others. In the Coeur d'Alenes, I worked in the Frisco Mine, in the Standard Mine and in the Tiger Foreman. On the Mother Lode in California, I worked in the Utica, Stickel, and I was there when the Stickel Mine caught fire, and with three other men made the last trip up in 1890, or in 1894, I believe—I think it was '94—when we tried to subdue the fire by turning the water down through the air connections, and fighting it from underneath, and came pretty nearly staying under.

Q. When did you first become acquainted or know the claims in Copper Canyon in the Battle Mountain Mining District? A. In December, 1912.

Q. How did you come to go to Copper Canyon at that time?

A. I came from London to make an examination for that purpose, in connection with the other properties.

Q. Of what claims did you come to make an examination?

A. I came to make an examination of the whole group.

Q. Did that include the Salt Lake No. 3, Midas and Evening Star [616] Claims?

A. Those were claims in the group at that time which I examined.

Q. Did it include the other claims shown on the

(Testimony of Joseph Ralph.)

patent plat of Mr. Liddell, introduced in evidence?

A. Yes, sir.

Q. You say this was a group proper consisting of group claims? A. Yes.

Q. What do you mean by that?

A. Well, the company was holding there then a number of claims contiguous, and it would be impossible to speak of each one claim more than another—it was a contiguous group of claims.

Q. State what of the group workings tended to the development or economic benefit in a mining way of the three lode claims known as the Salt Lake No. 3, Midas and Evening Star?

A. You mean work which was going on at that time?

Q. Yes, which was calculated to be for the benefit of those three claims, the work which had been carried on?

A. In about May, 1912, there was erected on Salt Lake No. 3, a plant, the purpose of which was to save the copper values by leaching, and I believe the first work on the erection of that mill was about May, 1912; the first work in connection with it, the preparatory work.

The COURT.—(Q.) Do you mean the first work of construction?

A. The first preparatory work, your Honor.

Q. For erecting the mill?

A. Such as the grading for excavation, or roads, or something of that kind; and they also had a few at work opening up the old Virgin Shaft; that shaft

(Testimony of Joseph Ralph.)

had fallen into a state of—well, it subsequently—

Mr. THATCHER.—Do I understand the witness is testifying—I don't want to make any mistake; the question is what work was done which developed, or tended to develop, these three claims; [617] I don't know whether Mr. Ralph means to testify that the Virgin shaft was in the development of these claims.

WITNESS.—In the general sense, I am leading to that point, Mr. Thatcher.

Mr. THATCHER.—All right.

WITNESS.—Because the Virgin Shaft is 590 feet deep on a 60th degree incline, which would make it approximately 500 feet vertically, and that would be dipping toward the Salt Lake No. 3, not dipping away from it, but dipping towards it, and there are large bodies of ore exposed there; for instance, to-day, as I found in 1912, there is existing at this moment one face of ore there 15 feet wide, which will assay 7.5 per cent copper, to-day, and it was their intention, incidentally, to open up the main shaft.

Mr. FOREMAN.—We object to testimony as to what their intention was.

The COURT.—That may go out.

WITNESS.—They were opening up the main shaft for the purpose of operating; there was considerable work going on, and I arrived in Salt Lake City; or, I should say, that after my visit in 1912, I returned to New York for the purpose of marking my report, and I was sent back rather hurriedly, in fact I only had three days from the time of the acceptance of my report to catch the "Mauretani" the

(Testimony of Joseph Ralph.)

Cunard line, for New York. I arrived in New York City about the end—I think it was the last day of April, 1913, and I found a great amount of money owing; the operations had been undertaken, by the way, without the home office knowing anything at all about it, and—

Mr. THATCHER.—I object to this; it is not relevant or material.

The COURT.—That may go out.

WITNESS.—I am not intentionally trying to inject. [618]

Mr. THATCHER.—We know you would not do that, but cut it a little shorter.

WITNESS.—I would be very glad to cut this short as you would like; if you will give me a short question I will be glad to answer it, rather than preach a sermon.

Mr. SPRINGMEYER.—Mr. Ralph, try to be responsive to the question as to the nature of the work on the group.

A. Well, the building of that mill, the road had been constructed, and they were then opening up the main shaft, I believe, when the work was suspended.

Q. Do you know the Farrin adit? A. Yes.

Q. Adjoining the Salt Lake No. 3 claim?

A. Yes.

Q. Describe generally to the jury the character of that adit, and its significance, if any it has, with reference to the development of any of these three claims.

A. The Farrin adit is an adit about a thousand feet

(Testimony of Joseph Ralph.)

long, with quite considerable drifting and raising, which runs in an easterly direction, and the portal of which—I will have to see the map to be exact—say two or three hundred feet north of the Salt Lake No. 3. That adit was run in 1908 and 1909, according to the pay-rolls which I have here; and that adit could quite conceivably be utilized for the economic development of not only the Salt Lake No. 3 claims, but of a great number of other claims, and undoubtedly was devised for that purpose. If it were asked whether the principal of physical contiguity applied—and by the way, when I use the word "contiguity," that means something directly connected, that is, something contiguous to another; if two claims adjoin, they are physical contiguities, but there are two principles of contiguity involved; there is physical contiguity and economic contiguity, which I would explain in this way; when the Farrin adit was run there was existing at that time, open and [619] developed ore bodies at the main copper mine; the portal of the Farrin adit is only about 250 feet lower than the collar of the Virgin shaft; in other words, the Virgin shaft is 505 feet deep vertically; the Farrin adit on the horizontal plane is only approximately 250 feet below the collar of the Virgin, and approximately 250 feet from the bottom, and that adit was run off slightly to the north from the main Virgin shaft, so that if it were continued, it could not strike the Virgin shaft proper; but there were other principles involved. At that point there is an intrusion of quartz diorite,

(Testimony of Joseph Ralph.)

which my technical advisers assure me is the genesis of the copper-deposits at Copper Canyon, and undoubtedly it has a great influence upon the physical conditions there, as well as the general metallurgical condition, and it was evidently the hypothesis of the old management that if they went to work at the Virgin shaft, which was on the southern extremity of the copper bodies, and worked from there, they would be faced with two conditions; in the first place they would be at the extreme south end of the hog-back, where the main virgin copper deposits are; and in the second place, they would be faced with opening up an old crooked shaft, a shaft with bumps in the foot wall so you could not haul a stick up through it with any speed, and which, in addition to that, went off laterally.

Mr. THATCHER.—(Q.) Which shaft was that?

A. The main Virgin shaft. So it was evidently the idea of the old management to run this new Farrin adit in, and to see first, whether the main copper lodes of the Copper Canyon passed through that diorite intrusion, and continued to the north; and if they had done that, and if that materialized, that would be point number one of great economic importance.

Q. You are still referring to the Farrin adit? [620]

A. Farrin adit, yes. Point number two is, that if on the way in they encountered other lodes, then any lateral work done on those intermediate lodes would give them a lateral swing, as it were, to devise

(Testimony of Joseph Ralph.)

a new shaft at a point which would be of exact and direct and comprehensive economic import to the whole group. Evidently they had that idea in view, because although they spent twenty-five thousand dollars approximately on the Farrin adit, its portal was still 250 feet above the bottom of the Virtin shaft; so there must have been a broad general scheme of development.

Mr. THATCHER.—I move to strike out what must have been.

Mr. SPRINGMEYER.—That may go out.

Mr. THATCHER.—He can tell what the conditions on the ground were, and then give his opinion as a mining man.

Mr. SPRINGMEYER.—Just simply state, as General Thatcher says, the facts, and then give your opinion.

WITNESS.—Well, I would infer that such an hypothesis is not only rational, but—

The COURT.—Well, Mr. Ralph, the reason for the objection is that your opinion is evidence; what you state as to other people's intentions and purposes is not evidence; that is merely hearsay on your part. If they want the opinions of the management of the Glasgow Western it is their duty to subpoena the people who entertain those opinions, to come here and swear to them, otherwise they are merely hearsay. Your opinion is of value, and it is of evidentiary value. Do you get the meaning?

A. I think I do, your Honor. Do I infer that my opinion is asked as to whether that is of economic import?

(Testimony of Joseph Ralph.)

Mr. SPRINGMEYER.—Yes. Let me put it this way: In your opinion would that be a possible or *reason* development plan for the whole group, including the three claims here in controversy? [621]

A. It certainly would.

Q. Do you know the Eagle tunnel? A. Yes.

Q. How long is that?

A. Well, I forget now; I think it is about 325 feet or 330, something of the kind.

Q. Do you know about how far from the eastern side line of the Midas claim that is?

A. Oh, several hundred feet.

The COURT.—I didn't understand that?

A. Several hundred feet.

Q. The portal was several hundred feet east of the east side line of the Midas? A. Yes.

Mr. SPRINGMEYER.—(Q.) In fact, it is about 350 or 400 feet, is it not?

A. I never attempt to keep a detail like that in my head.

Q. You would say that is approximately correct, would you not?

A. I have a map there if you would allow it to go in evidence just for what it is worth, I could explain those things.

Q. It is shown on the maps, I think, Mr. Ralph; but it is approximately 350 or 400 feet?

A. Approximately.

Q. Now, in your opinion is the development work in that tunnel, or would the development work in the

(Testimony of Joseph Ralph.)

tunnel be a possible or reasonable development plan for the whole group, including these three claims?

A. No it would not.

Q. It would not? A. No.

Q. Do you know of any other work on this group of claims, off the boundaries of the Salt Lake No. 3, Midas and Evening Star, which in your opinion, would be a possible or reasonable development plan for the whole group; including the three claims I have named—have you covered all the group work, in other words?

A. In my opinion there are only two points of work on the Copper Canyon group, which by the principles of economic contiguity [622] could apply; namely, the Farrin adit and main Virgin shaft. I am speaking now of the whole group; there are other workings which are of great economic importance to various claims in themselves. For example, I did the assessment work for 1914 at the north end of the group where a certain adit was devised for the purpose of doing the work for three or four claims there, and that adit certainly is of direct physical contiguity, and of exact economic contiguity to those claims at the northern end; and that would apply to the main group—the whole group.

Q. Why do you say the Eagle adit or tunnel is not a possible or reasonable development plan?

A. Because the portal is too high, and pointing too far away, and it is away from the center of the group; it would develop certain claims at that southeasterly end, but it could not benefit the claims in

(Testimony of Joseph Ralph.)

the center and in the gulch.

Q. The mining conditions then would be such that it could not possibly develop any ore bodies in the three claims here in controversy, the three lode claims?

A. When you say it "could not," if a person went into the Eagle adit and sunk a 750-foot shaft, and then drifted west 1500 feet, yes, you would strike veins; but by no stretch of engineering technique could you justify such a scheme.

Q. I see. Now, do you know the cost of the mill and leaching plant and buildings built on Salt Lake No. 3, in 1912? A. Yes.

Q. How do you know?

A. Because I had to pay the bills.

Q. You paid them yourself? A. Yes.

Q. What was the cost?

Mr. THATCHER.—Objected to on the ground it is incompetent, irrelevant and immaterial. The cost of the leaching plant is [623] not mining development work within the meaning of the statute.

(Discussion.)

The COURT.—Do you contend that mill was built for the purpose of working ores extracted from the Salt Lake No. 3, Midas and Evening Star?

Mr. SPRINGMEYER.—In part, yes; because they were group claims and developed under a general scheme of development.

The COURT.—Not because they were group claims, but was it done for the purpose of working ores on those claims?

(Testimony of Joseph Ralph.)

Mr. SPRINGMEYER.—Yes.

The COURT.—What do you contend are the facts which show that was the purpose?

Mr. SPRINGMEYER.—The facts which show that was the purpose are, that these were operated under one general scheme of development, and each year a certain amount of work was done, sometimes on a small scale, sometimes on a tremendous scale, sometimes on the claims separately, and sometimes on one piece of work, such as the Virgin shaft or the Farrin adit.

The COURT.—Well, I am very much in doubt about that; for the present I shall exclude that testimony.

Mr. SPRINGMEYER.—We take an exception on the ground it is competent.

Q. Mr. Ralph, you testified that you knew the three claims, known as the Salt Lake No. 3, Midas, and Evening Star? A. Yes, sir.

Q. When did you first know the boundaries of those claims?

A. Do you mean when I first saw the actual outside monuments?

Q. Yes. A. That is hard to say.

Q. Did you go over the boundaries of the claims previous to your making the report you mentioned? [624]

A. Oh, I undoubtedly saw numerous corner posts, which were pointed out as the southwest corner of this claim or the northwest corner of the other, et cetera, but except where it came to making a notation of any cut, it would not have any importance.

(Testimony of Joseph Ralph.)

I may have, for that matter—

Mr. THATCHER.—I think he has answered the question.

Mr. SPRINGMEYER.—(Q.) Well, when did you first know the boundaries of the three claims?

A. I don't think that I went to the actual monuments on those three claims until after the last lawsuit.

Q. You did not?

A. I don't think so, I am not sure. I may have done so.

Q. You say you saw some of them?

A. Oh, yes, but I could not say which one.

Q. Did you ever find any mineral bearing lodes or veins on the Salt Lake No. 3 claims?

A. Oh, yes.

Q. When did you first find them?

A. I believe the first thing that I noticed on the Salt Lake No. 3 were the veins on the roadway, in 1912; but I am not sure whether that vein on which the shaft is sunk now is one of them or not, because most of the veins there are vertical in the cut; that is, as you go along the roadside, there are numerous little veins exposed by the road; but there is a bigger vein there, which has a different strike, on which the shaft has been sunk subsequently, and which is valuable.

Mr. THATCHER.—I move to strike that out, about the shaft being valuable.

Mr. SPRINGMEYER.—That may go out.

WITNESS.—That vein where the shaft is sunk

(Testimony of Joseph Ralph.)

runs in a different way, and the strike of it is almost parallel with the roadway, [625] and whether I noticed that in 1912 or not, I don't know.

Q. Have you made any sketches showing the vein to which you have been testifying?

A. Yes, I made a little sketch of that condition.

The COURT.—(Q.) Can you say whether you knew that vein on which the shaft was sunk before the placers were located?

A. Before what, your Honor?

Q. Before the placers were located?

A. Oh, yes, I saw it before then.

Mr. SPRINGMEYER.—(Q.) You said, I believe, in 1912, did you not?

A. I am speaking now of 1912.

The COURT.—(Q.) You said you didn't know whether you saw it in 1912 or not? A. Yes.

Q. What I want to know is whether you saw it later, and any time before the placers were located?

A. Yes.

Mr. SPRINGMEYER.—(Q.) What is that sheet one? (Hands to witness.)

A. This is a sketch or diagram, largely to illustrate the condition; it is not supposed to be technically exact, simply to illustrate the conditions in order to have a certain point made clear.

Q. That is, to show the measurements, distances and size?

A. The size of the vein, and its strike and its dip, which purely—well, I will say hypothetically—

Mr. THATCHER.—Purely what?

(Testimony of Joseph Ralph.)

A. Hypothetically to illustrate a condition.

Mr. SPRINGMEYER.—(Q.) But do they approximately represent the situation?

A. Yes.

Mr. SPRINGMEYER.—We offer that in evidence. [626]

Mr. THATCHER.—(Q.) You have never seen this vein on its dip, below the road, have you, eliminating the question of the shaft? A. No.

Mr. THATCHER.—I think it is something not in evidence, if the Court please, and objected to as not in evidence.

WITNESS.—As I say, that was simply a sketch to illustrate an hypothesis.

Mr. THATCHER.—A sketch to illustrate an hypothesis?

A. Yes.

Mr. SPRINGMEYER.—(Q.) You have seen the vein along the road, have you not?

A. I have seen the vein here; I have seen the vein here (indicates); its width, its exact depth, its exact strike it is simply for the purpose of illustrating the idea.

Mr. SPRINGMEYER.—I think it would go into evidence; it may be of some help to the Court and jury.

The COURT.—(Q.) As I understand, none of this diagram which is colored in red is now exposed?

WITNESS.—Yes, your Honor; this next sketch will illustrate it a trifle better.

Q. Well, was this exposed at the time the placers

(Testimony of Joseph Ralph.)

were located, this part (indicating)?

A. Yes, your Honor; here is the road, and there was a vein coming along here, which would approximate the inner wheel track; then it had cut slightly into that, and then broke across the road, and was hard to trace. This is hypothetical here; this is not, this is absolutely in view (indicates on sketch).

The COURT.—What is absolutely in view I will allow you to introduce, but the remainder of it will not go in. I think that part should be obliterated, if you want the sketch to go in.

Mr. SPRINGMEYER.—Perhaps we can strike this part out then. [627]

WITNESS.—I think if you are going to emasculate it like that you will simply confuse it; you had better tear it up, I mean to say it won't make the idea any clearer—that is simply to illustrate my view.

(The portion of the sketch admitted in evidence is marked Deefndant's Exhibit No. 27.)

Mr. SPRINGMEYER.—(Q.) Now, examine sheet two, and state what that represents (hands to witness).

A. This is a sketch to illustrate the same conditions as shown on sheet one, with the addition of the shaft thereto; in other words, the condition which existed after the placer was discovered.

Q. The first part, as I understand, represents what actually is in view, and the second does not?

A. No; this illustrates approximately what is in view to-day also; that is, this part here (indicating)

(Testimony of Joseph Ralph.)

would hold good to-day as much as the other.

Mr. THATCHER.—Except for the shaft?

A. Except for the shaft; you see here there is a break, and where this lode has been extracted, so that we could show that this is as the condition exists to-day, the shaft having been sunk, that part of the lode has become extracted.

Mr. SPRINGMEYER.—We offer it in evidence, if the Court please.

Mr. THATCHER.—Same objection.

The COURT.—You object to that portion of it which has been disclosed since the location of the placers?

Mr. THATCHER.—Yes.

The COURT.—For the present I will sustain the objection to that portion of it which has been disclosed since the placer discovery. That will go until the determination of the question about the samples. [628]

(The sketches not admitted are marked for identification.)

Mr. SPRINGMEYER.—(Q.) The red on the sketch represents the vein, does it not, Mr. Ralph?

A. Yes.

Q. Please describe any other veins that you knew of prior to the location of the placer claims on the Salt Lake No. 3, if any?

A. I knew of that vein behind the leaching tanks before the claims were jumped, and also of that point where the discovery cut—

The COURT.—When you say behind the leaching

(Testimony of Joseph Ralph.)

tank, do you mean east or west of it?

A. That will be point 21 on defendant's map.

Q. Is that vein east or west of the leaching tank?

A. It is behind the main leaching tank, on the second bench, I believe; the mill proper is not resting on it; that is for the excavation for the upper set of leaching tanks.

Mr. SPRINGMEYER.—(Q.) It is substantially west then, is it not, Mr. Ralph, west of the mill?

A. Oh, yes.

Q. The mill faces to the east? A. Yes.

The COURT.—(Q.) Is it between the leaching tanks and the mill?

Mr. SPRINGMEYER.—Describe it, if you can.

WITNESS.—The leaching tanks, your Honor, and the mill, are erected on a series of benches, and say the mill is on the upper bench, or that may be two benches, then there will come in a set of leaching tanks, and below that a second set of leaching tanks, and this vein is at the rear of the second set of leaching tanks, practically between the leaching system proper and the mill building; the mill building does not come over.

Q. Does this photograph correctly represent it?

A. Yes, fairly well.

Q. The mill and the leaching tank? (Hands photograph to witness.) [629] A. Yes.

Q. Could you on that indicate the exact position of the vein? A. Not the exact position.

Q. The approximate position?

A. Yes, the approximate position.

(Testimony of Joseph Ralph.)

Mr. SPRINGMEYER.—We offer that in evidence. Not the printed matter.

Mr. THATCHER.—No objection. The printed matter is to be eliminated.

The COURT.—How about this red cross on here?

Mr. SPRINGMEYER.—(Q.) What does the red cross indicate?

A. That was an approximate position of the northwest end line of Salt Lake No. 3, and the approximate position of the northeast end line; it does not bear on this at all; that could be scratched out with a knife.

Q. Would you indicate with a cross in red the approximate position of the vein which you have testified to.

(Witness indicates the position on the photograph.)

Q. With a red line or a cross? A. A cross.

The COURT.—Does the printed matter at the bottom of the photograph go in?

Mr. SPRINGMEYER.—No; he has scratched it out, it can be torn off.

The COURT.—There is no objection to the picture?

Mr. THATCHER.—No objection.

(The photograph is admitted in evidence and marked Defendant's Exhibit No. 28.)

JUROR.—Was this vein near where that came from, that rock?

A. I don't know where that rock came from. (Plaintiffs' Exhibit A-8.)

(Testimony of Joseph Ralph.)

Mr. SPRINGMEYER.—(Q.) Is that like the country rock around the vein?

A. That is the typical country rock of Salt Lake [630] No. 3; that is, the rock itself, without any copper stain; that copper stain is copper sulphate, which came from the mill leaching, and you can go under the mill to-day, and take whole solid stalactites of copper sulphate, that is the solid copper sulphate, which have percolated through the mill; that is practically the same substance, if you went into the chemists shop to buy some blue vitriol.

JUROR.—The vein is somewhat in the vicinity?

A. Well, I don't know where this is taken from.

Mr. SPRINGMEYER.—Well, if it were testified that that was taken from somewhere around the mill, you would say the country rock outside the vein is of the same substance as that, would you?

A. Oh, yes, that is the typical country rock, the rock itself.

JUROR.—Was that developed for mining purposes?

A. That was developed when the bench was cut for excavation for the leaching tanks.

Q. It had not been exposed before that?

A. No—I say had not, I don't know; I could not say anything of my own knowledge, because I didn't know the conditions there; it may have cropped out, for all I know.

Mr. SPRINGMEYER.—(Q.) Describe how wide the vein back of the mill was, in your opinion?

A. Well, as near as I remember, it would be from fifteen inches wide at the widest part, and narrower

(Testimony of Joseph Ralph.)

on the top, I believe about ten inches, something of that nature, I never measured; I never took any measurement.

Q. State whether in your opinion it would carry values? A. Oh, yes.

Q. You made no assays of it? A. No.

Q. State approximately the width of the vein or veins about which you have testified on the road leading to the mill. [631]

A. Well, that one which was exposed on the roadway, on which the shaft was sunk subsequently, that may range anywhere from four inches to ten; I would say ten, maybe more—about ten.

Q. In your opinion as a mining engineer, would that vein carry values, from the appearance?

A. Oh, yes, I know it did carry values.

Q. Do you know of any other outcrops or veins of mineralized—

A. (Intg.) I should say I have an assay here of that.

Q. Is that an assay you made yourself?

A. No, sir, it is an assay made by Mr. Boyle, when he testified here at the last trial, when he said it went $6.85 per ton.

Mr. THATCHER.—Went what?

A. Went $6.85 per ton.

Mr. THATCHER.—I move to strike that out, if the Court please.

The COURT.—That may go out.

Mr. SPRINGMEYER.—(Q.) You have no assays yourself?

(Testimony of Joseph Ralph.)

A. No, I am simply going on the record of Mr. Boyle.

The COURT.—That may go out also. The jury will be instructed at the present time to disregard that testimony.

Mr. SPRINGMEYER.—(Q.) You say you had no assays made yourself, Mr. Ralph—just try to answer the questions? A. No.

Q. Do you know of any other outcrops of mineralized veins or mineralized bodies in place on the Salt Lake No. 3 claim?

A. That is previous to the jumping of the claims?

Q. Yes.

A. That cut to which I have previously testified, and where the old stake was eventually found.

Q. What point is that?

A. At a point now represented by open cut 14 on defendant's exhibit.

The COURT.—Point to it, please.

A. Point 14, your Honor. (Indicates on Defendant's Exhibit 5.) [632]

Mr. SPRINGMEYER.—(Q.) Point to it on Plaintiffs' Exhibit "A," and give the number.

A. "2." (Indicating on Plaintiffs' map "A.")

Q. Did you know of any outcrop or any exposure of vein or mineralized rock in place at that point prior to the location of the placer claims?

A. Oh, yes, there was an outcrop there.

Q. Describe it, as you saw it prior to the location of the placers.

A. Well, now, it is very hard to do.

(Testimony of Joseph Ralph.)

Q. Did you pay particular attention to it?

A. I did afterwards. Now, you see I am up against a condition where to describe an object which I have seen on numerous occasions, some occasions of which preceded a certain date, and some of which are subsequent to that date, and if I am asked to say how much of my description now is the result of an impression made prior to a date, and how much subsequent to a date, I could not do it. All I can say is that there are enongh there to have justified me running in and finding that four-foot vein.

Q. You can give no further description, then, of the outcrop, or anything which you might regard as a vein, as you knew it prior to the location of the Guy Davis placer?

A. I cannot go any further than that. There was —however, I am debarred from saying what my impressions would be when I orderd that work done?

Q. Yes, that is improper, Mr. Ralph.

A. Well, then, I cannot touch on it any more.

Q. Do you know what the cost of building the road on the Salt Lake No. 3 in the year 1913 was?

Mr. THATCHER.—I object unless it first be shown that the purpose of the road tends to develop the Salt Lake No. 3, Midas or Evening Star. [633]

Mr. SPRINGMEYER.—I think the showing is sufficient that it might be for the benefit of the claim.

The COURT.—I think it is safer to exclude that testimony. Of course anything that is done on the claim in the shape of mining work, would go as as-

(Testimony of Joseph Ralph.)

sessment or annual labor, whether it was done wisely or not; but it does not seem to me that was done for the development of that claim, or that that was its purpose. For the present I shall exclude that testimony.

Mr. SPRINGMEYER.—We except to the ruling of the Court on the ground the evidence is competent and proper, and that a sufficient showing has been made to show that this road was for the benefit of the claim; and that it was in furtherance of a general scheme of development of mining operations for the development of all the constituent claims of a group, and particularly of the Salt Lake No. 3, Midas and Evening Star.

Mr. THATCHER.—This witness has not so testified as to excavations; he has testified that the erection of this mill was in pursuance of a general scheme.

Mr. SPRINGMEYER.—I think he has testified to it.

Q. What did you testify regarding the plan of the mill and purpose of the mill, if you knew?

A. I don't remember what I testified in the exact words.

Q. Well, what is the fact?

A. The facts are that that mill was designed and erected at that point upon a general principle which tended towards the economic import of the whole group, that any mineral on the ground anywhere, makes no difference whether the Salt Lake No. 3, or the John John claim away up at the head of the

(Testimony of Joseph Ralph.)

gulch, it would be impossible to disassociate the erection of that mill and the installing of it there, without for that purpose.

Mr. SPRINGMEYER.—We renew our offer on that showing. [634]

Mr. THATCHER.—We renew our objection upon the ground it is not for the development of a mining claim within the meaning of the statute.

(Argument.)

The COURT.—I will sustain the objection. You may proceed.

Mr. SPRINGMEYER.—We take an exception to the ruling of the Court on the grounds previously stated.

Q. Do you know of any work done on the Salt Lake No. 3 claim prior to the location of the Guy Davis placer in the year 1913?

A. Yes, I sunk a shaft down on the southwest corner.

Q. What appliances or machinery or tools did you use in sinking that shaft? A. Oh, just a windlass.

Q. Was there any timber used in the construction of the shaft?

A. I don't know; I believe there was a collar set or two collar sets, but I don't swear to that.

Q. Was there any powder used in the construction of that shaft?

A. I could not say definitely whether they used powder, or whether they didn't; probably they did.

Q. State in your opinion whether or not that shaft was of the reasonable value of at least one hundred

(Testimony of Joseph Ralph.)

dollars? A. It cost me more than that, I guess.

Q. Well, is it of the reasonable value of at least one hundred dollars?

A. If it is about fifteen or sixteen feet in the ground there, it could be very reasonably worth a hundred dollars.

Q. You would say, Mr. Ralph, that it is of the reasonable value of at least one hundred dollars, would you?

Mr. THATCHER.—I object to the cross-examination of his own witness.

The COURT.—You have testimony as to the depth of that shaft, and he says if it was fifteen or sixteen feet deep; in other words, he is not prepared to give the depth of it. [635]

Mr. SPRINGMEYER.—(Q.) Mr. Ralph, how deep was the shaft at any time that you know?

A. I don't know of my own knowledge.

Q. Did you ever see the shaft? A. Yes.

Q. Did you ever look down the hole?

A. Not when it was finished—yes, I have seen it since it was finished; I mean to say after it was completed I didn't see it; I ceased work there, and put the men at another point to work.

Q. Had any change been made in that shaft afterwards? A. No.

Q. How deep was it when you examined it?

A. I can't say any more than I have said.

Q. Pardon me?

A. I can't say any more than I have said.

Q. Do you know about how deep it was?

(Testimony of Joseph Ralph.)

A. As near as I remember, the work continued for several days after I saw it last; since then it has been partially filled up, and I was never there at that point when the men ceased work to accurately gauge its depth.

Q. State from the explanation you have given, whether in your opinion that shaft is reasonably worth at least one hundred dollars.

Mr. THATCHER.—I don't think he is qualified to testify.

The COURT.—He can answer it if he wants to.

WITNESS.—I can only answer that, Mr. Springmeyer, the way I have answered it before.

Mr. SPRINGMEYER.—What was the answer?

A. That if that shaft was fifteen or sixteen feet deep, and the wages there four dollars a day, and there was blasting done, and two collars sets, that is, two sets of timber lagging, that it would be reasonably worth a hundred dollars.

JUROR.—What is timber worth out there? [636]

A. About forty dollars a thousand; wages, four dollars a day, eight hours.

Mr. SPRINGMEYER.—(Q.) Mr. Ralph, in your opinion state whether or not the veins exposed on the Salt Lake No. 3 claim prior to the location of the Guy Davis placer in 1913, were such as would justify a reasonably prudent man in locating and developing the claim as lode mining claim?

A. Absolutely.

(Testimony of Joseph Ralph.)

Q. Did you ever take any samples from Salt Lake No. 3 claim?

A. Yes, I took a sample of ore and a sample of the country rock.

(RECESS FOR FIVE MINUTES. AFTER RECESS.)

Q. Where did you take the samples?

A. The sample of ore was taken in open cut 14, Defendant's Exhibit No. 5; cut number 2, Plaintiffs' Exhibit "A"; and the country rock somewhere fifteen or twenty feet, around there somewhere.

Q. From what part on cut number 2 was the vein sample taken?

A. Now, I am not sure whether that is admissible under his Honor's ruling.

Q. Was that taken from that part?

A. What part?

Q. From any part of cut number 2, which was exposed prior to September, 1913?

A. I stood in the cut to take it, and it was about even with my face; now whether it was exposed—the chances are that I could have gone there two years ago, and by scratching off the dirt, I might have taken it, but I could not say that I could.

Q. Well, do you know whether you took it from a depth that would be the bottom of the trench in the position you testified to its being, prior to September, 1913.

A. In September, 1913, there were only croppings, and when I took that there was no cut, and now there is a cut, oh, four or five feet wide, a twelve-foot face,

(Testimony of Joseph Ralph.)

and fifteen feet long, and a [637] four-foot vein; and, gentlemen, I cannot come any closer than that; it may be—

Mr. THATCHER.—I move to strike out the testimony, where he said four-foot vein.

Mr. SPRINGMEYER.—It may go out. I offer this in evidence.

Mr. THATCHER.—Objected to on the ground it is incompetent, irrelevant and immaterial.

The COURT.—(Q.) How far below the surface was that taken, that is approximately?

A. Well, your Honor, there is an overburden or cliff on the hanging wall of the vein about that much now.

Mr. THATCHER.—The Court is only asking you about the cut.

WITNESS.—Let me answer the Court.

Mr. THATCHER.—I move to strike out, if the Court please, about the vein.

Mr. SPRINGMEYER.—Don't mention anything regarding a vein; just say what exists there.

The COURT.—Perform your calculations mentally, and then give your answer as near as you can.

WITNESS.—What is the question?

The COURT.—The question is about how far from the surface was this sample taken?

A. I would say about a foot.

Q. Well, was the material about it solid?

A. Yes, I am frank to say there was a little solid material above it, that is of the same formation; the lode goes to the surface.

(Testimony of Joseph Ralph.)

Q. Was this excavation from which you took this sample the same cut which you saw in 1913?

A. The place where I took it may have been a foot under that.

Q. You simply dug down in the cut which was originally there? [638]

A. No, the cut which was originally there, your Honor, is obliterated, absolutely obliterated, so it is hard to say where the cut ceased and the new cut commenced; that would change the whole thing, because there is rather a big excavation there, and I was not looking for such questions; I could have taken photographs and have answered your Honor's question directly and intelligently, but I am afraid I can't now.

Q. There was a cut there of certain dimensions, those have been given rather indefinitely; now you can't tell whether this new excavation included any part of that cut or not?

A. Yes, it included part of the old cut, because the old cut is obliterated.

Q. You have dug the old cut out, or extended or enlarged it?

A. Yes, the old cut is gone, unless there is a little bit of it, which I am not sure, right on the extreme inner face.

The COURT.—You may proceed. I will sustain the objection to that for the present.

Mr. SPRINGMEYER.—I ask that be marked for identification, and take exception to the ruling of

(Testimony of Joseph Ralph.)

the Court on the same grounds as the other exceptions.

Q. You say you took a sample of country rock also? A. Yes.

Q. At what place?

A. Ffteen or twenty feet, I believe, from there, a cropping where the country rock comes to the surface.

Q. Will you please examine the contents of this sack, and see whether those are the samples to which you refer? (Hands to witness.) A. Yes.

Q. In your opinion what sort of rock is that—before you answer that I will offer this in evidence.

Mr. THATCHER.—(Q.) I understand these are taken from the country rock? A. Salt Lake No. 3.

Q. Near this cut? A. Yes. [639]

Q. How far?

A. Oh, about twenty feet, possibly.

Mr. THATCHER.—No objection.

(Rock contained in sack is admitted in evidence and marked Defendant's Exhibit No. 29.)

Mr. SPRINGMEYER.—(Q.) In your opinion, what is this formation?

A. That is an igneous rock, which by the aid of Mr. Tibby and other advisers, I am advised is alaskite.

Q. Did you ever make an examination of these samples yourself? A. Petrological examination?

Q. Any sort of an examination? A. No.

Q. Does this rock scratch with a knife?

Q. Yes. It is impossible to determine the characteristics of that rock with any field testi.

(Testimony of Joseph Ralph.)

Q. Mr. Ralph, state whether or nor the road leading to the mill is profitable as a mining trench or not?

A. Well, it acted as a mining trench incidentally.

Q. In what respect?

A. Well, it exposed ore, it exposed veins, although it was not run for that purpose.

Q. Describe just exactly the conditions as they exist with reference to the road and the vein or veins, exposed by it.

A. Well, in addition to this one vein which the sketch has previously referred to, along there at frequent intervals the whole thing is fissured seamlets, some of them you could not designate as a lode, practically a seam, others from which you could take values, undoubtedly; and that is characteristic. The road is crosscutting the country formation, it is not running with the country formation; the road is about 350 feet in length, in solid rock, solid rock the whole extent and in crosscutting, that solid formation, that means that every vein which apexes within that 300 or 350 foot portion is exposed there; the book of [640] nature is revealed for that distance along there at that point.

JUROR.—Was it built for a road or for a mining cut? A. It was built for a road.

Mr. SPRINGMEYER.—(Q.) You say it did have the effect of developing the vein? A. Certainly.

Q. Just as an ordinary trench would?

A. It had that effect, certainly; whether a man went there to build a road to a mill or to a mine, or

(Testimony of Joseph Ralph.)

to a town, or whether he went there to dig a trench for the purpose of prospecting, the effect would be the same.

JUROR.—Did this ledge outcrop both sides of the road?

A. It went along exactly parallel with the road for a little distance, so that the shaft in going down practically took out that section, and then it came across the road, and on the other side went into the bank.

Q. But did the country rock or ledge outcrop?

A. It is all solid formation.

Q. Before the road was built?

A. A hen couldn't go there and scratch a hole deep enough to make a nest there along that road.

Mr. SPRINGMEYER.—(Q.) Did the ledges outcrop there?

A. I have not made investigation.

Q. Do they extend to the surface of the road cut on each side?

A. Yes, sir—well, on each side some of these veins will come up; for instance, here is the top of the road cut, (illustrating), some of these will be here, and you will see them tracing back; I never attempted to trace them back there, I didn't think of their being sufficient consequence or import to the case, otherwise I would have paid more detailed attention to them.

Q. Did you ever take any photographs of the corner monuments on [641] Salt Lake No. 3?

A. Yes.

(Testimony of Joseph Ralph.)

Q. Will you please examine these and state whether or nor they are correct representations of the corner monuments on that claim? (Hands to witness.) A. I took these photographs on the 13th of May. This photograph is northwest.

Mr. THATCHER.—We admit there were monuments on the Salt Lake No. 3 at the time the placer claims were located; there has never been any denial of that fact.

Mr. SPRINGMEYER.—They might be of some importance to the jury; if you have no objection to the offer we will offer them.

Mr. FORMAN.—We object to them for the reason they don't tend to show a discovery, and have no bearing.

The COURT.—It does not seem to me necessary as long as it is admitted the claim was properly monumented.

Mr. SPRINGMEYER.—The only purpose is to show the claim was properly monumented.

The COURT.—Are these pictures for all three claims.

Mr. SPRINGMEYER.—No, only for the one.

The COURT.—Does your admission cover only the Salt Lake No. 3?

Mr. THATCHER.—The Salt Lake No. 3. As far as that is concerned, I may say that at the time we located, there is not any doubt, and I am willing to admit, in order to save time, that the monuments were up on the ground. I am willing to admit the four monuments were on the Salt Lake No. 3, one

(Testimony of Joseph Ralph.)

at each corner, and that six monuments were up on the Evening Star and besides that, a location post at the point designated on the map and we are willing to make the same admission with reference to the Midas that there were six monuments—posts—up there and that there was a location post monument on the Midas at the point delineated upon the patent plat, and the map is in evidence. At the time we [642] located that is the condition we found them, just as they are on the patent plat, with possibly the exception of an inch or two one way or the other.

Mr. SPRINGMEYER.—(Q.) Mr. Ralph, did you say you made any examination of any veins on the Midas claim, which were in existence or exposed prior to September, 1913. A. The Midas?

Q. Yes. A. Yes.

Q. Where?

A. Point 25 and point 42 on Defendant's Exhibit 5, and 21 and 22 on Plaintiffs' Exhibit "A," if they represent the same.

Q. What did you find at the first point?

A. A shaft approximately six or eight feet deep and four or five feet wide, and eight or ten feet long.

Q. What did you find in the way of a vein or mineral-bearing rock in place.

A. There was a vein exposed there.

Q. What sort of a vein?

A. Well, vein quartz, encased in country rock of alaskite.

Q. How wide is it, approximately?

(Testimony of Joseph Ralph.)

A. Oh, it may be a foot or fifteen inches.

Q. State in your opinion whether it would carry values?

A. Of my own knowledge I have not assayed it, but it is undoubtedly a lode.

Q. In your opinion would it carry values then?

A. What do you mean by value, any appreciable value?

Q. Yes, would it carry an assay value?

A. I should say undoubtedly it would.

Q. In what metals?

A. Well, it is copper stained; there are some copper stains there, but I would imagine that the copper factor would not be the dominant one in anything found in that lode, and that gold, possibly silver, but most probably gold, **[643]** would be the controlling factor, although there is quite considerable evidence of copper there.

Q. Did you take any samples at that point?

A. I took a sample of the vein, and of the country rock there, on the 13th of May this year.

Q. Were those samples taken from portions of the vein and country rock which were exposed prior to September, 1913?

A. I sent word out to Joe Jurey, my foreman there, as I could not very well scratch those samples out with by hand, to drill a couple of "pops" in the bottom of the shaft—that is a short hole—as I wanted to take samples from the exposed vein, and I wanted them taken with my own hands, and I didn't want them to be blasted until I came; so those two small

(Testimony of Joseph Ralph.)

holes were drilled by Joseph Jurey in the bottom of the shaft; they were blasted in my presence, and I took a sample of the vein as broken off from that shot, and of the surrounding country rock of that vein.

Q. Was the material contained in sack 2 taken from the vein at that point? (Hands to witness.)

JUROR.—What year was that shaft sunk?

Mr. SPRINGMEYER.—The shaft was sunk in 1907, according to Mr. Jurey's testimony.

WITNESS.—This is a sample of the vein as exposed in the cut, which has been described here as the Midas discovery.

Q. That is described by Mr. Jurey as the Midas discovery?

A. Yes, that is shaft 25, on Defendant's Exhibit 5.

Mr. SPRINGMEYER.—We offed this in evidence.

Mr. THATCHER.—No objection.

(Rock contained in sack 2 is marked Defendant's Exhibit No. 30.)

Mr. SPRINGMEYER.—(Q.) Did you say that was vein quartz, Mr. Ralph? [644] A. Yes.

Q. You said you took a sample of the country rock at that place? A. Yes, sir.

Q. How far away from the vein?

A. I aimed to take it absolutely adjoining the quartz itself.

Q. Was it in the shaft then?

A. Same place—in the shaft.

Q. Have you that with you?

A. Yes, sir; the country rock is in the sack marked

(Testimony of Joseph Ralph.)

A–2. These are fair samples of the country rock encasing the vein at the Midas discovery, of which any one can take as many tons as he wishes.

Mr. THATCHER.—What is that last?

A. Of which anyone can take as many tons as he wishes.

Mr. SPRINGMEYER.—That is to say, this is country rock, and anybody may have it. We offer this in evidence.

Mr. THATCHER.—No objection.

(Rock contained in sack A–2 marked Defendant's Exhibit No. 31.)

Q. What is the material you have designated as country rock Midas discovery?

A. That is alaskite, or the same rock as the general country rock of Salt Lake No. 3, with the exception that they are close to the vein there, and the action of water and possibly some weathering influences, renders it a little less hard.

Q. Will that scratch with a knife?

A. You can almost scratch it with your nail.

Q. You said you made an examination, what did you find there?

A. At the other point on the Midas there is an adit running into the hill in an easterly direction, which possibly forty or fifty feet from the portal encountered a lode, and which lode was dipping away, that is, dipping east, so that the adit entered the footwall, cut it by entering the footwall side; that vein pitches very flat to the east, so flat, in fact, that, roughly, it would be [645] possibly fifteen feet before it

(Testimony of Joseph Ralph.)

passed right out of the adit altogether; it is a lode undoubtedly, but I took no samples there.

Q. You took no samples there? A. No.

The COURT.—(Q.) Which way did you say that lode dipped?

A. The lode dipped to the east; it dipped in the same way the adit is headed for, that is, approximately; there are several degrees of variation there in that, but approximately both are the same.

Mr. SPRINGMEYER.—Doesn't the vein dip northeasterly, or what did you say?

A. I said it dipped easterly; the cross-cut goes into the hill, and the vein, the strike of it, is approximately northerly and southerly, and the pitch of it is easterly, in an approximate way, that the adit is running though not exactly, because there may be seven and a half or maybe ten degrees difference, but you can say approximately it is dipping the same way.

Q. Would you call those veins or lodes?

A. Absolutely.

Q. In both points you have mentioned?

A. Absolutely.

Q. Give your reasons in as few words as possible.

A. Well, a lode is mineralized material enclosed in country rock between two walls, and containing values greater than will be found in the country rock, and absolutely different from the country rock in character. Now that is a definition of a lode, gentlemen, which is accepted by the—

Mr. THATCHER.—Never mind about accepted.

Mr. SPRINGMEYER.—(Q.) Mr. Ralph, in your

(Testimony of Joseph Ralph.)

opinion would this vein you have testified existed in the adit on the Midas claim, carry values?

A. It certainly would.

Q. Would a reasonably prudent man, prior to September, 1913, have been justified in locating or developing the Midas claim as a lode mining claim, in your opinion? A. Yes, sir. [646]

Q. Do you know of any work done on the Midas claim in the year 1913, prior to the month of September?

A. Yes, there was a shaft sunk on the Midas on the northeast corner.

Q. How deep was that, if you know?

A. It was approximately the same depth as the shaft which was sunk on the Salt Lake No. 3, a few feet away; I don't remember now which of those shafts was commenced first; one of those shafts was commenced for a purpose, and then stopped, and then work was commenced on another, and which was commenced first I could not say.

Q. Is that shaft approximately the same depth as the shaft on the Salt Lake No. 3, sunk during the year 1913?

A. Yes; I am of the opinion that the shaft on the Midas is a little deeper, although it may be that the shaft on the Salt Lake No. 3 is a little deeper.

Q. Did you ever make any examination of any veins or lodes on the Evening Star, which were exposed prior to September, 1913?

A. Yes, at two places; at points 60 and 69 on Defendant's Exhibit (No. 5), and it would be 20 and 24,

(Testimony of Joseph Ralph.)

I presume, on Plaintiffs' ("A").

Q. Going to the first point you named, what did you find?

A. I refer to point 60 as the big cut—that is what I have got in my head—and point 69 is the Evening Star discovery.

Q. Take the first one you have named, the big cut, and state what you found.

A. It was a place where in 1912 the old management had done assessment work, and was in the nature of a trench across a pronounced outcrop, a big vein; this trench may possibly have been, I think I would be safe in saying it was thirty feet long, maybe more, in 1912, before I did work there in 1913. [647]

Q. You say you found a vein there?

A. Oh, yes, there is a pronounced vein.

Q. What were its characteristics as distinguished from the characteristics of the surrounding country rock?

A. Well, it seems there as if there is a very, very wide vein traversing right through that country, and it is of a quartz nature.

Q. Did you trace that vein on the surface?

A. You can pick it up here and there; of course, in order to say that a vein can be traced—when you say that a vein goes from this point to this point, and from B to C and C to D, an engineer has to check himself up, as it were, in a way that there is no guesswork, and the only way to connect that up, to go across the territory where I believe it does go,

(Testimony of Joseph Ralph.)

would be by a system of trenches at intervals, so then by even casual field observations there would be doubt about it.

Q. You are not able to say then whether or not you have traced it on the surface?

A. There are three points where that big showing is in evidence, between which three points there are several hundred feet nearly a thousand, approximately, say 750, taking the big cut on the Evening Star, if we say that vein does continue to the Evening Star discovery, and if the showing at the big cut is the same as at the discovery, and taking those two as a line—a base—looking still farther west there is a showing of very similar nature on the adjoining ground; that is the farthest that I can go; I could not say that the showing in the three places would be one and the same lode, but I am of the opinion that they would be the same.

Q. Did it carry mineral in your opinion? [648]

A. Well, I have had assays made, and those were not admissible in the last trial, so I can't have anything to testify here; I have not sampled them myself.

Q. In your opinion, Mr. Ralph, just judging from the appearance, would it carry values in minerals?

A. Oh, yes.

Q. Did you take a sample at that point?

A. Yes.

Q. Of the vein material? A. Yes.

Q. State whether this is the sample that I hand you, marked 4 on the bag. (Hands to witness.)

(Testimony of Joseph Ralph.)

A. Yes, number 4 from the Evening Star cut.

Q. That was from a place that was exposed prior to September, 1913, was it not? A. Yes.

Mr. SPRINGMEYER.—I offer that in evidence.

Mr. THATCHER.—(Q.) Is that from cut 60 and 20? A. No, from one cut.

Q. Well, which one, 20 on our map and 60 on yours? A. Yes, 20 and 60.

Mr. THATCHER.—No objection.

The COURT.—(Q.) Was that taken from the vein?

A. Yes, your Honor.

Q. It is vein matter? A. Yes, your Honor.

(Sample in bag 4 admitted, and marked Defendant's Exhibit No. 32.)

Mr. SPRINGMEYER.—(Q.) Now going to the other point at which you made an examination, state what you found.

A. Well, the cut at that point exposes a very big vein, and I think it is a continuation of the vein which was exposed in the big cut, where this is, only at this point where the discovery is, the material there is very much kaolinized and leached, and it is situated on points where it would be subjected to the weathering influences, and it could very well be the same lode [649] which is exposed there at point 60, but is different in character on the surface.

Q. Outside of the character of the ore, if I may term it as such, or the material, are the vein conditions the same?

A. Why, no, the vein conditions are now the same;

(Testimony of Joseph Ralph.)

at point 60 on Defendant's Exhibit 5, it is more massive, and the disintegration has not been prominent at all; whereas on the discovery point of the Evening *State,* which is point 69 on our exhibit, and point 24 on plaintiffs', there has been an intense kaolinizing influence, which has not only disintegrated the vein, but the surrounding country rock to a large extent.

Q. In your opinion does that vein at that discovery point, so called, carry values?

A. I never assayed it personally, but I should say most probably.

Q. Did you take a sample of the vein at that place?

A. I took a sample of some quartz in the bottom of the cut.

Q. State whether this is the sample you took in bag 3. (Hands to witness.) A. Yes.

Q. Does that correctly represent the vein material at that point?

A. That correctly represents the less kaolinized portion of the quartz found at that place.

Q. You say that was exposed prior to September, 1913? A. Yes.

Mr. SPRINGMEYER.—We offer it in evidence.

Mr. THATCHER.—No objection.

(The sample contained in bag 3 is admitted, and marked Defendant's Exhibit No. 33.)

Mr. SPRINGMEYER.—(Q.) In your opinion, state whether the veins exposed on the Evening Star claim prior to September, 1913, are such as would justify a reasonably prudent man in locating and developing the claim as a lode mining claim? [650]

(Testimony of Joseph Ralph.)

A. Yes, sir.

Q. What do you think the country rock, or the vein quartz on the Evening Star claim, which has been admitted in evidence, is?

A. What do I think it is?

Q. Yes; do you think it is quartzite?

A. It is vein quartz.

Q. Why do you think it is vein quartz rather than quartzite?

A. Well, there are two ways in making a definite statement of that nature; if a piece of that quartz were handed to me, and I didn't know where it was taken from, and if I was asked to say absolutely whether it was vein quartz, without making or having a microscopic examination made, I would not be able to say.

Mr. THATCHER.—(Q.) You would not be able to say?

A. I would not be able to say positively; but if I took that piece of quartz from a vein myself, where I see the enclosing country rock is entirely different, then no matter what values it carries, whether fifty cents or fifty thousand dollars, I know that that must be vein quartz.

Mr. SPRINGMEYER.—(Q.) Did you take any samples?

A. Yes, I took a sample of the alaskite at a point where it had not been subjected to any weathering influence at all; and also a sample of the quartz diorite.

Q. At what point did you take the alaskite sample?

(Testimony of Joseph Ralph.)

A. I took the alaskite sample from the Eagle tunnel, or the Eagle adit, where you get a depth of about 175 feet.

Q. Is that of the same character, except for the weathering, as the alaskite on the Salt Lake No. 3 Midas and Evening Star?

A. This alaskite, although it is not absolutely identical, you will find by examination there are some traces of pyrites, which shows that what is known as the magma at that point contains mineral, and which would prove, of course, that it is igneous; but [651] it is a fair type, no weathering influences, or influences of that nature would change its general character; that is why I took it.

Q. Is this the sample? (Shows to witness.)

A. Yes, sir.

Mr. SPRINGMEYER.—We offer it in evidence.

Mr. THATCHER.—No objection.

(Sample of rock admitted in evidence and marked Defendant's Exhibit No. 34.)

JUROR.—(Q.) Is this from Salt Lake No. 4?

A. No, this is from the Eagle tunnel, up the hill from the Midas; that came from the Eagle tunnel.

Q. On what claim, the Eagle claim?

A. The Eagle claim.

Mr. THATCHER.—(Q.) Is this from the Eagle tunnel?

A. The Eagle tunnel. My only reason for taking that at the Eagle adit is, there is no other place on the whole group where one can take a sample of country rock to greater advantage, and be sure that it

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(Testimony of Joseph Ralph.)

has not undergone any weathering change.

JUROR.—(Q.) How deep has this country rock got to be before any weathering change will take place?

A. If the country rock is seamed and fissured, and the waters can percolate, you may have the weathering influences going to a considerable depth; on the other hand, if there is little seaming, that would not be the case; but of course where it is standing right out above the surface itself, and you have heat and cold and wet and drought, all intermingling and alternating, then you have the disintegration of the surface going on, and the general weathering; the result is one may take a dozen samples of rock of the same nature and unless he is very careful of the conditions under which he took them, he would think they are different rocks, whereas they may be one and the same.

JUROR.—(Q.) What is the difference between this big cut and your discovery cut in the vein, as to weathering, as to the condition; [652] there might be a change through weathering in your discovery?

A. I am of the opinion that the two samples were at one time identical.

JUROR.—(Q.) Did you say there was pyrites in there?

A. Yes, sir, there is quite a little pyrites; if you take the lens you can see it all through it; and that shows its magnetic origin; the pyrites could not have been there unless that rock at one time was in the form of magma, therefore, of course, naturally intrusive, or igneous.

(Testimony of Joseph Ralph.)

Q. Rock as hard as that would not leach much, would it?

A. No, that would not leach much; it browns—you see the difference in the two; here is a piece nearer the surface, that is one and the same; the same formation, the same general character of this big rock here; and the sample which was shown previously, which was taken from the Salt Lake No. 3, it is browner than that, but the general characteristic is the same.

Q. Would you find pyrites in that if it were broken open?

A. I don't know whether you would or not, but it would make no difference whether pyrites was found in it or whether it was not; there is no pyrites in the Salt Lake sample, but that does not mean that the whole magnetic intrusion would be of the nature; when I mention pyrites I simply mention it as an incident, and has nothing to do with the general character of the rock.

Mr. SPRINGMEYER.—(Q.) Does this scratch with a knife?

A. Easily. (Witness scratches rock with a knife.) You can't do that with feldspar or quartz.

Q. Did you take any samples of quartzite anywhere on the claims?

A. I have this sample (indicates). I should say when you speak of the hardness test of rock, it does not mean you can take a knife [653] and cut it up like a piece of clay or putty; and in feldspar the blade of a knife won't touch it, the point of a knife won't touch it, and when a knife will make an abrasion in

(Testimony of Joseph Ralph.)

a rock you then know that it cannot be quartz.

Mr. THATCHER.—(Q.) Did I understand you to say that feldspar would not cut or scratch?

A. It will scratch, yes, you can certainly scratch it; but the scale of hardness between a knife point and feldspar, you have feldspar at 7, and I suppose a knife point would be 5.5; the 5.5 scale of hardness could not touch 7.

Q. I wanted to know whether I understood you or not.

A. No, you can't. This is a sample of the quartz diorite, and my only reason in bringing it was simply for its illustration of the rock which has been, and which I anticipated would be, mentioned several times—the quartz diorite.

Mr. SPRINGMEYER.—(Q.) At what point did you take that?

A. Two pieces of it I took at the portal of the Farrin adit, or in about a hundred feet; and one piece I took just north and east of the mill, possibly at fifty feet; and the other piece, frankly I don't know where I took it, it might have been the self same outcrop, I am not sure. This has no significance, only in the way, we have here the plain facts that into one igneous intrusion, that is, the alaskite, another intrusion occurred—there was a subsequent intrusion.

Q. Is that representative of the quartz diorite on Salt Lake No. 3? A. Yes.

Mr. SPRINGMEYER.—We offer that in evidence.

Mr. THATCHER.—No objection. I don't see

(Testimony of Joseph Ralph.)

any materiality in it.

Mr. SPRINGMEYER.—(Q.) Did you say some of this came from Salt Lake No. 3?

A. No, it would not; it would be a little over [654] the east side line.

Mr. THATCHER.—That does not prove a vein, and does not tend to show a discovery in any shape, manner or form.

The COURT.—What is it, country rock?

Mr. SPRINGMEYER.—Country rock.

The COURT.—Oh, I don't think it makes a great deal of difference. If you want to put it in I will allow you to do so, the same as the material that came from the Eagle tunnel.

Mr. SPRINGMEYER.—Well, I will offer it.

(The sample is admitted, and marked Defendant's Exhibit No. 35.)

Mr. SPRINGMEYER.—(Q.) Mr. Ralph, do you know of any work done on the Evening Star claim in the year 1913, prior to the month of September?

A. Yes, sir.

Q. Under whose direction was the work done?

A. Under my own.

Q. What was it?

A. It consisted of a shaft which went down vertically 23 or 25 feet, I think it was—no, 33 feet; and then went off on a incline about 53, say 55 feet altogether; I believe it was 33 feet on the vertical and 25 on the incline; but these things, an exact foot or so, I never bother my head with.

Q. Pont out the place on plaintiffs' map and on

(Testimony of Joseph Ralph.)

defendant's map, giving the number.

A. On Defendant's Exhibit 5 it is marked "D," and on Plaintiffs' Exhibit "A," it is marked, I would not swear to it, but I think it is "26"—yes, it is "26" on Plaintiffs' Exhibit "A."

Q. State what was your purpose in sinking the shaft.

A. I sunk that shaft for two purposes; I was sinking one shaft up on the southwest corner of Salt Lake No. 3, and of the northwest corner of the Midas, going down for placer; and I came to [655] the conclusion that after the purpose had been served for which I commended it, that work to better economic importance and value could be secured by going down to the very lowest end of the property; so I then went down to that point which is marked "D" on defendant's exhibit, and represents, in the first place, the neck of the canyon, the very lowest point of the very lowest claim of the Glasgow and Western property.

JUROR.—(Q.) What month was that?

A. That was about, I don't know, in May or June, June, I believe, 1913, long before there was any jumping of claims.

Mr. SPRINGMEYER.—(Q.) Well, go on and describe what your purpose in sinking the shaft was.

A. My purpose in sinking the shaft was, I realized that the assessment work had to be done on those three claims, and that work done at that point would comply finally with the principles of physical contiguity, that is, it would be the lowest claim and the lowest part of the lowest claim; that a shaft sunk

(Testimony of Joseph Ralph.)

there from which any drifting were done, would benefit the whole three, and at the same time develop the placer at the lowest point in the canyon, which by that time I knew existed; that was my reason for sinking there.

Q. Did you purpose that for lode mining, then, as well as placer mining?

A. That shaft could serve most admirably for a two-fold purpose; in the first place, there was rich placer known to exist there, and I wanted a shaft to develop that placer at its lowest point; the wash at that point, that is the burden—the over-burden—resting upon the solid formation, is approximately fifty feet deep; now if there are any lodes there in the canyon, in the gulch proper, with the exception of any which have been exposed since by other parties, no one has ever seen the outcrop, [656] because they are under fifty feet of wash; therefore it will be obvious, and a person does not have to be either a mining engineer or even a miner, for that matter, to see that a shaft sunk at that point, and running on up the gulch on the pay channel on bedrock, would not only develop the placer, but would lay bare the whole course of nature's book; so a lode could not come up without its being intersected and cut.

Q. Then I understand you to say it was done for both lode and placer mining purposes?

A. It was done for the purpose of lode mining and placer with the object of assessment work for that claim, and the two immediate contiguous claims.

JUROR.—(Q.) How deep was it?

(Testimony of Joseph Ralph.)

A. At that point we went down 33 feet on an incline and 25 feet on the vertical.

Mr. THATCHER.—You are kind of mixed, aren't you?

A. Yes, 33 on the vertical and 25 on the incline.

JUROR.—(Q.) Which way did your incline run?

A. Toward the east, approximately.

Q. Incline on the bottom of bedrock, and run toward the east?

A. The shaft was sunk on the left-hand side of the road going up, and that is on the western rim of the gulch.

Q. Which way was the incline at the bottom of the shaft, east or west?

A. It would go east, because the shaft encountered the western rim, and therefore it had to dip east in order to get the channel; that is, when I say east and west, I am using it approximately.

Mr. SPRINGMEYER.—(Q.) Was it your judgment in sinking that shaft that that was a proper method to develop the three claims in a lode mining and placer mining way?

A. I am forty-six years of age; I have had twenty-six years of [657] mining, and I have—

Mr. THATCHER.—I submit that is not answering the question.

The COURT.—Can you answer that yes or no?

A. Absolutely.

Mr. SPRINGMEYER.—(Q.) State about what was the reasonable approximate value of that shaft, including the vertical and incline work.

(Testimony of Joseph Ralph.)

A. You could take that 53 feet and multiply it by ten.

Q. Fifty-eight, is it not?

A. Fifty-eight and multiply it by ten, roughly; it may be done for less money, but I don't think very much less than five hundred dollars.

Q. Would you say the reasonable value of it is at least five hundred dollars?

A. In going off the incline, when you get off the incline, of course, the first few feet sink quicker, and under good conditions; when going off on the incline, where the conditions of working were naturally adverse in every respect for economic operation, I think there are a good many feet down there that come much higher than ten dollars, but I would be conservative, and say that four hundred dollars was the cost of that shaft; with the wages at four dollars a day.

Q. Regardless of the cost, Mr. Ralph, would you say four hundred dollars is the minimum value?

A. That is the minimum value.

Q. Are you counting in that the value of timber, and putting on the windlass, and the value of supplies? A. Yes, sir.

Q. Did you discover anything in sinking that shaft? A. Yes, sir.

Q. What? A. Placer gold.

Q. In what way?

A. When I decided to sink that shaft I called upon Mr. Christensen, who owns the adjoining property on the south, and I told him what I contemplated do-

(Testimony of Joseph Ralph.)

ing, and I asked him whether he would accompany me to the point represented on [658] the map, so that I could plan a shaft, and there would be no danger of any boundary dispute. I knew Mr. Christensen very—

Mr. THATCHER.—I object to that; just tell what you did.

The COURT.—I don't see the purpose of it.

WITNESS.—Because Mr. Christensen went down there, your Honor.

The COURT.—Just wait. That part of the answer is not responsive, and it may go out under General Thatcher's objection. Just simply answer the question.

Mr. SPRINGMEYER.—(Q.) Describe how you found it.

A. Well, when the incline in going down came to that point, where the bedrock started going up, rising again toward the east, naturally the lowest point or depression was the channel, and in the channel there was very fine values.

Q. Did you take any placer gold out?

A. I didn't take it out actually with my hands; Mr. Christensen, as I was going to explain, eventually visited this place with me, and he took out about, roughly, twenty pounds of dirt, and we took that dirt up to the surface, and took it down to Mr. Christensen's camp—Mr. Dahl was there, his partner, and Mr. Dahl washed the dirt, and from that twenty pounds of dirt, or thereabouts, it might have been more, I say twenty pounds, might have been thirty

(Testimony of Joseph Ralph.)

or forty, I don't think it was more than thirty, we were coming up that incline and couldn't carry very big samples, there was 3.3 ounces of gold taken out, and I have a very good reason for knowing the exact weight.

Q. Was it placer gold, in your opinion?

A. Absolutely; it could not be anything else.

JUROR.—(Q.) How much did you say that was?

A. 3.3 of an ounce, just exactly one-third of an ounce.

Mr. SPRINGER.—How much is that worth if you have translated that into money values?

A. Six dollars.

(The Court admonishes the jury, and 12 o'clock a recess is taken until 1:30 P. M.) [659]

AFTER RECESS—1:30 P. M.

(All parties present.)

Direct Examination of Mr. JOSEPH RALPH, Resumed.

Mr. SPRINGMEYER.—(Q.) Mr. Ralph, you said the purpose of this shaft on the Evening Star, 33 feet on the vertical and 25 feet on the incline, was for assessment work on all three claims in 1913?

A. Yes, sir.

Q. What did you do with reference to the other shafts in that connection on Salt Lake No. 3 and Midas claims?

A. The shaft on the southwest corner of Salt Lake No. 3, and the one of the northwest corner of the Midas, was sunk for another purpose other than assessment; and after those two shafts had accom-

(Testimony of Joseph Ralph.)

plished their purpose, and realizing that they would not be of the best economic advantage by reason of their position, for the assessment work, I stopped those shafts, and told Joseph Jurey to go down to that point where I located shaft "D" on Defendant's Exhibit 5, so that what further work was done could be done in such a way that it would have every phase of the economic import to those three claims on the principle of contiguity, that being the lowest place on the whole three claims.

Q. Did you pay anything for any bunk-houses or office buildings built on the Salt Lake No. 3 in the year 1912? A. Yes, sir.

Mr. THATCHER.—The same objection, that they do not constitute annual labor in the development of a mine, within the meaning of the statute; nor do they constitute five hundred dollars' worth of improvements within the meaning of the statute unless it be shown they were used in connection with this mine.

[660]

Mr. SPRINGMEYER.—Before your Honor rules on the question let me inquire a little further.

Q. Do you know whether any men were worked on the Salt Lake No. 3, Midas and Evening Star for any purpose in the year 1912, from any payments that you made?

A. Not of my own personal knowledge; I could only surmise from payrolls.

Q. You made some payments, did you not, after you arrived?

A. Yes, but there would be no alligation on the

(Testimony of Joseph Ralph.)

books as regards particular portions; for instance, mining is alligated under mining; development is alligated under development, mill construction under another, leaching under another, and houses under another; so I could not say where any particular man worked.

Mr. SPRINGMEYER.—I think we have shown by the witness Joseph Jurey that work was done on these three claims, Midas, Evening Star and Salt Lake No. 3, during the year 1912, and that the men who performed that work, as well as the men who performed work on other claims, lived in these houses on Salt Lake No. 3. It is impossible, of course, to segregate the men who did the work on these three claims from the men who did the work on the others, for the reason they were on day's wages, as testified to by Mr. Jurey, and the work was constantly going on; but I think the work is sufficient to warrant evidence showing that houses were built and money was expended for that purpose on the Salt Lake No. 3 claim during that time. Further, the evidence of Mr. Jurey was that they were on the Salt Lake No. 3, watching the personal property of the owners of the claims, which was situated on the Salt Lake No. 3, in 1912, as well as in 1913, and prior hereto.

Mr. THATCHER.—That is not my recollection of the testimony; however, I don't think it is material as showing annual labor on these particular claims; the building of these houses does not [661] show they were occupied by people working upon these

(Testimony of Joseph Ralph.)

claims, or for the benefit of these claims, or that it in any way tended to the development of these particular claims as mining claims.

The COURT.—That is my view of it.

Mr. SPRINGMEYER.—We take an exception to the ruling of the Court on the ground that the evidence is proper and tends to show development.

The COURT.—Your question is as to the value of the bunk-houses?

Mr. SPRINGMEYER.—The value of the bunk-houses and office buildings.

The COURT.—You may have your exception.

Mr. SPRINGMEYER.—(Q.) In sinking the three shafts on the Salt Lake No. 3, Midas and Evening Star in the year 1913, you testified you found placer gold in the Evening Star shaft; did you find any in either of the other shafts?

A. I never went down the other shafts; I knew that Mr. Jurey—I can't say I knew, it was reported that there were values, but I never went down; I knew they reached bedrock, and I knew whatever values they found above bedrock would not be bearing upon the situation very strongly.

Q. Did you ever make application for patent for the Salt Lake No. 3, Midas and Evening Star?

A. Yes, sir.

Q. When did you first conclude to patent, and make application for patenting those three claims.

Mr. THATCHER.—We submit it is immaterial, if the Court please this is a patent proceeding; it is admitted that he has done so.

(Testimony of Joseph Ralph.)

Mr. SPRINGMEYER.—We want to show that it was done before certain discoveries were made; I think it is material, before the discoveries of the placer gold were made.

The COURT.—Very well, you may ask the question. [662]

A. It was either the latter part of May or early in June. I think it was the later part of May, in which I secured the necessary authorization from the land office, or the surveyor-general, I believe, and made my deposit with the National Bank of the Republic in Salt Lake City, to cover the fees, and I retained Mr. Liddell at the same time; I know that Mr. Liddell proceeded to—

Mr. THATCHER.—I think he has answered the question, if the Court please.

Mr. SPRINGMEYER.—(Q.) Did you employ a surveyor to do this patent work of surveying the claims? A. Yes.

Q. What time did he go to work, if you know?

Mr. THATCHER.—It is already in evidence by the patent plats and the testimony of Mr Liddell.

The COURT.—Yes, that is already in evidence; there is no dispute about that, I think.

Mr. SPRINGMEYER.—(Q.) Did you ever make any examination of the monument which is in evidence is now in existence at the so-called Salt Lake No. 3 discovery, indicated as point 14 on Defendant's Exhibit 5 and point 2 on Plaintiff's Exhibit "A"?

A. Yes, sir.

Q. When did you first make an examination of that so-called monument at that point?

(Testimony of Joseph Ralph.)

A. The first time that I saw the post was,—I don't know whether it was late in December *on* in January; it was after the last trial.

Q. How carefully did you make a search?

A. I made a very, very careful examination.

Q. What did you do?

A. I went to the point for the purpose of—

Mr. THATCHER.—Well, what you did. [663]

Mr. SPRINGMEYER.—Just state what you did, not what your purpose was—what you did.

A. I looked for the purpose of finding a post or monument which had been described to me, or referred to by Mr. Liddell here in this courtroom at the trial.

Q. Did you do anything else?

A. Well, I found a stake there, and I also found the outcrop of a lode.

Q. When next did you see the so-called monument, or post, as you call it?

A. I believe the next time that I was there was in May, 1914, I am not sure of the month; I went out to make a survey of the place, to see how far that point was from the east side line, and from the north end line; I think that was in May, 1914, I am not sure of that.

Q. Had any work been done at the point in the interim? A. Oh, yes.

Q. What had been used in doing that work?

A. The assessment work, or part of the assessment work, I forget which, for the year 1914 had been done there some time between the time of the last

(Testimony of Joseph Ralph.)

trial and the time in which I visited for survey.

Q. Well, had any work been done between the time when you made the examination to which you testified, and the time you made the examination in 1915, in May?

A. No, you are mixing up fifteen with fourteen.

Q. Oh.

A. I made the affidavit, I believe, in May, 1914.

Q. Then I will let that go; I understand the year to be 1915. You said you examined it in May, 1914?

A. Yes.

Q. What examination did you make at that time?

A. I made a careful examination; I went there for the purpose of surveying that point, because the assessment work— [664]

Q. All I want to know is how careful an examination you made, just what you did.

A. Well, at the time I went to that post with Joseph Jurey, after having been advised of its existence, after having found the post I looked for a location notice, and I looked very carefully.

Q. Did you find anything at that time?

A. I did not.

Q. After that was any work done at that point, after you made the last search to which you testify?

A. Yes, sir.

Q. When was that work done?

A. It was done subsequent to the time which I have just referred to, and prior to May, 1914, when I made the survey and made the affidavit, though I am not sure of the exact date when I made that affi-

(Testimony of Joseph Ralph.)

davit; I am not endeavoring to carry exact dates in my head; however, the point is this; I returned to this locality some time shortly after the last trial, and found a stake or post there; I examined around the stake or post very carefully for a location notice. I could not find it; then I ordered the assessment work for 1914 to be done at that point, or at least part of the work. I believe part was done on the roadway, and in that work this cut we are referring to now—

Mr. THATCHER.—(Q.) Do you mean 1914—assessment work for 1914?

A. I believe so; I believe it was 1914.

Mr. SPRINGMEYER.—(Q.) Well, regardless of whether it was assessment work, was there work done there, Mr. Ralph?

A. Yes, sir, there was a cut run into the hill, approximately fifteen feet, which would give a face, or in the *brest* and the face—oh, roughly, ten feet, all in blasting rock.

Q. Do you know when that was made?

A. That cut?

Q. Yes.

A. Some time prior to the time when I made the affidavit, and subsequent to my having gone there after this last trial. [665]

Q. What was used in making that cut, or how was it made? A. It was blasting rock, every foot of it.

Q. It was blasting rock? A. Yes, sir.

Q. You testified when you were on the stand the first time, I believe, that on the 13th of May, 1915,

(Testimony of Joseph Ralph.)

you, with others found a location notice in the can, which has been offered in evidence here.

Mr. THATCHER.—No, he has not testified to that.

WITNESS.—I didn't testify to that.

Mr. SPRINGMEYER.—I beg your pardon. Have you seen the can which has been offered in evidence? A. Yes, sir.

Q. And the location notice of the Salt Lake No. 3?

A. Yes, sir.

Q. So-called location notice? A. Yes, sir.

Q. Were you present when that was found?

A. I was.

Q. When?

A. On the 13th of May, this year; 13th of last month; to-day is the first of June.

Q. How far from where the blasting occurred did you find this can?

A. Well, I didn't find it myself; John Jory found the can.

Q. Well, it was found in your presence, was it not —you were there?

A. Yes, but I am going very carefully.

Q. How far was it?

A. It was right at the foot of the monument.

Q. How far away?

A. It was right at the mouth of this open cut.

Q. Then it was in immediate proximity to the open cut?

A. It was practically right at the mouth of the open cut, so that the first shot that went off would

(Testimony of Joseph Ralph.)

blow it over the dump.

Q. That is, if the can had been there, you mean?

A. Yes, sir. [666]

Q. Do you know whether there is any solid rock on Salt Lake No. 3? A. Yes, sir.

Q. Where?

A. Right at this point I am describing now.

Q. Anywhere else with reference to the center lode line running lengthwise?

A. Well, the road to the mill crosses the center lode line—I believe the lower end of the road to the mill crosses the center lode line.

Q. It does cross the center lode line?

A. I believe so. (Witness goes to map.) No, it does not, not according to that map.

Q. Do you mean this road marked "Wagon road"?

A. No, I was referring to the new road to the mill, this one here (indicating on map).

Q. Do you know whether there is any solid rock along the center of the lode line running lengthwise on the claim? A. There is.

Q. Where is it?

A. Between the office building and the first bunkhouse, there is solid rock, which comes down there, comes down and crosses beyond the center lode line; here there is solid rock, coming down here (indicating on map).

Q. Will you state its proximity to any point on the map, so that the reporter may get it.

The COURT.—Well, he has located it between

(Testimony of Joseph Ralph.)

the office and the bunk-house.

WITNESS.—The office and the first bunk-house, your Honor.

Mr. SPRINGMEYER.—(Q.) You have seen the photograph on which Mr. Tibby and Mr. Liddell identified the sold rock? A. Yes, sir.

Q. What is your opinion as to that being the proper position for it. [667]

A. I would say it is fairly proper; it gives a very fair idea of the outcrop of rock at about that point.

Mr. THATCHER.—(Q.) The picture gives a fairly good idea?

A. The small picture I am referring to; there is another place where there is solid rock, this line here, this contour line, and represents a sort of a promontory—here is a gulch, that is a gulch, and that is a gulch (indicating on map); this represents a promontory; there is solid rock on the promontory.

Mr. SPRINGMEYER.—(Q.) That is about the center of the claim?

A. It crosses the lode line—no, it is south of the center.

Q. Did you ever make any geological examination of the conditions on these three claims?

A. Well, I am not a geologist; I have had a great deal of technical advice, and from that I have formed my deductions.

Mr. THATCHER.—I object to his deduction from technical advice.

Mr. SPRINGMEYER.—(Q.) Did you make any geological representation of the conditions of the

(Testimony of Joseph Ralph.)

claim, as you know them yourself? A. Yes, sir.

Q. Then you have made some geological study of the formation and conditions?

A. I have made a study; I was under the impression when you spoke of examination, that it would be in the form of the refinements of technology, of my own direct efforts in the way of making slides, et cetera.

Q. You mean that you are not a geologist yourself? A. No, sir.

Q. Simply a mining man. State what this is. (Hands to witness.) A. Those are—

Q. State what the paper is, simply what it represents?

A. They are sketches to illustrate the geological conditions of Copper Canyon. [668]

Q. Do those sketches properly represent the geological conditions of Copper Canyon?

A. Yes, sir, they illustrate in a graphic way what Mr. Tibby has been telling on the stand practically.

Q. Is that from your own personal knowledge, as well as the examinations and studies you have made of the formations there?

A. I have seen the general formations as portrayed there; in fact, this was made from my own suggestion.

Q. Does it represent the formations in an accurate way on these three claims, Salt Lake No. 3, Midas and Evening Star?

A. No, when you say accurately, that would mean to say—

(Testimony of Joseph Ralph.)

Q. I withdraw that then.

A. That would have to be a section line across here; but it is illustrative, the same as a text-book after describing the condition, says refer to cut so and so, where it is exemplified; those are the cross-sections of the imaginary points to illustrate what has been said. Now if you say, are they accurate, they are accurate in the sense that they represent, but nothing could be accurate unless you run a line across here, call that line A–B, and then say that was a cross-section of the line A–B—that is not intended for that.

Q. Then, Mr. Ralph, it simply illustrates the geological condition, as I understand it? A. Yes, sir.

Mr. SPRINGMEYER.—We offer it in evidence.

Mr. THATCHER.—(Q.) This was made from your own observations?

A. I made the sketch myself for Mr. Tibby to put out.

Q. You made the sketch yourself?

A. I made the sketch myself.

Q. Was it made from your own observations?

A. It was made from a sketch I made myself, and the only reason I didn't make the actual tracing of it myself is, I didn't have the time. [669]

Q. I don't care whether you made it or not, of you outlined it, and it represents what you know; it represents your observations on the ground, does it?

A. If you are asking whether without any technical aid from anyone whatever, that I would have gone to the canyon, unaided by geologist or petrolo-

(Testimony of Joseph Ralph.)

gist, and have been able to have made those sections, my answer is no; they simply cost me seven hundred and fifty dollars of hard patient work, and of advice.

Q. From Mr. Tibby?

A. And from other gentlemen; from Professor F. Rogers of Stanford, and other parties.

Q. Then this does not purport to be the result of your own observations and your own knowledge of the formations and veins in that district?

A. I can't answer that any more than I have.

Mr. THATCHER.—I object on the ground it is incompetent, irrelevant and immaterial, and not the observations of this witness.

Mr. SPRINGMEYER.—We think he has sufficiently qualified, seeing it is only for illustrative purposes; and while it is not entirely the result of his own observations, yet it is the result of his own observations and the advice he has received from competent geologists.

The COURT.—You can't say it is accurate.

WITNESS.—It is not intended to be accurate.

Q. Can you say that it represents the conditions as they are there on that ground?

A. Yes, your Honor; there is one point here, the conditions on the bottom prospect of this—that is the last one; there are four there, your Honor; and the bottom one fairly well represents a cross-section taken here; going through this quartzite, diorite, on through the alaskite, with the quartzite on the west.

Q. How about the others? [670]

A. Well, this point here, your Honor, is the most southerly part, where the quartz diorite intrudes

(Testimony of Joseph Ralph.)

into the alaskite, except in small noses, as it were, which has just broken through the formation; but at this point here there is a very pronounced intrusion. Up here on the other claims this formation is massive practically; that is to say, it covers a large area.

The COURT.—Well, Mr. Ralph, of course I can't from your explanation tell whether you are competent or not; that is a good deal a question for you to answer yourself. If you can say of your own knowledge that that diagram represents with reasonable accuracy the conditions as they exist on that ground, I would like to know it. We have to get all our information either from books, or maps, or from our own investigation; and we have but very little in our heads that is not put there in some way. If you have received your information from men rather than from books I don't know that it impairs the quality of your information, or makes what you testify to here any the less reliable; the question with me is whether you know of your own knowledge, and can swear that that represents correctly, or with reasonable correctness, the conditions as they exist on that ground. You may answer that, if you please.

A. The bottom cross-section, your Honor, reflects very, very reasonably the conditions at that point I indicated.

Q. Can you say that of your own knowledge?

A. Yes, your Honor.

Q. Without having been so informed by somebody else? A. Without having been so informed.

(Testimony of Joseph Ralph.)

Q. I don't mean exactly that; can you say of your own knowledge, without any reference to what other people have told you, as to whether it is correct or not; are you able to decide for yourself [671] whether it is correct, without any assistance from anyone else?

A. I can say, your Honor, I have known and have seen that quartz diorite at the point indicated.

The COURT.—Well; I will allow it to go in for what it is worth. You may have an exception. The witness's answers as to his qualifications are not altogether satisfactory, but it may go in for what it is worth.

(The sketch is marked Defendant's Exhibit No. 36.)

Mr. SPRINGMEYER.—(Q.) Will you please explain this to the court and jury in as few words as possible?

A. Eliminating those for a while; in my responses to his Honor's questions I said that this very, very fairly reflects the conditions shown here; if a cross-section were taken so. When I speak of cross-section, if I take an orange in my hand, you see the thing in bulk; if I take a knife and cut it in two in that manner, and still hold the other half in my hand, you are then looking at a cross-section of that orange; and when I speak of a cross-section in an imaginary way, imagine that a giant knife, which has cut the earth down through there for a thousand or two thousand feet, and you could go down there and look at that cleft, you would be witnessing a

(Testimony of Joseph Ralph.)

cross-section at that point. Now, here at this point Copper Canyon is represented; as you go up Copper Canyon to-day; looking on the left-hand side, on most of the canyon side, you will see the vestiges of limestone all the way along the top of the cliff; in some places they are massive, and in other places only as vestiges; as one gets over north of Galena, the formation is nearly all limestone; then here, underneath that there is quartzite; that is to be seen there in massive form also, to-day; so as you walk up the Copper Canyon, with your face to the north, over on the left-hand side, which is west, you will see a [672] massive formation of quartzite with limestone superimposed. When we come to this side, we find a rock which is absolutely different in character from this; it is a rock which before I called in any technical aid whatever—and, by the way, I will say this, I have not required any technical aid to arrive at any point of which I have talked up to the present; I spoke of those as limestones only in my report in 1913, I didn't specify that as quartzite; I didn't examine it closely, because I had no opinion on that, simply mentioned limestone in a sort of cursory way; I might have left it out altogether. When we come on this side, I find that there is an igneous rock. I have had many reports on the canyon, and come into their possession, and some have spoken of that as trachytes, and some as porphyry; andesites have also been mentioned; and the gold spent, remember, is nothing; this is the investigation where I spent about seven hundred and fifty

(Testimony of Joseph Ralph.)

dollars to ascertain no one knew what the geological formation of Copper Canyon was. I knew over here there was an igneous rock; I knew into that igneous rock there had been a secondary intrusion; at the last trial here, I believe by a reference to my testimony, you will see I spoke of porphyretic intrusion or secondary intrusion; it was very vague, and I confess that it was vague, because, no man, whether he is miner, prospector or an engineer, very often even a petrologist, would dare to go into the field and pick up a piece of rock, and determine either its nature or its genesis, unless he had some sample which was fairly easy to read, or else he was very greatly endowed in the way of capabilities. These veins are absolutely as regards any exact spot, put in simply for the purpose of showing the fracturing which would naturally occur in this alaskite, when that alaskite has another intrusion in it in the form of quartz diorite. So we know at this point [673] here there is a massave igneous formation, and we know on this side there is quartzite; we know that on top of this quartzite, and superimposing it, there is limestone; we know when we come over here that this is an igneous rock, and it does not make very much difference whether we call it alaskite or rhyolite, or any other "ite," as long as we realize the basic principle, that it is an igneous intrusion. And we also know that at this point here there is another igneous intrusion, which is porphyretic in nature, and the technical name of which is quartz diorite, and that that has intruded into this, and undoubtedly is the genetic

(Testimony of Joseph Ralph.)

factor, or rather the genetic influence which produced the copper deposits of Copper Canyon. That explains this fairly accurately, and these three sketches are simply for the purpose of illustrating three stages in the development of this point; imagining that at one time the sandstones were laid down in the bottom of the ocean, and on top of those sandstones the limestones is deposited; then whether through the pressure of this limestone on the sandstone, turning it into quartzite, or whether by a pressure upward, having the same influence, this comes up and fits this here, as represented; so a break occuring here thrusts this over here, and what is left here in the way of limestones or of quartzites, or of sandstones, would only remain in the form of loose debris or boulders, no longer in position.

The next point, we have here the canyon represented, this limestone and this quartzite here being in relative portions, showing the canyon here, and into this alaskite, which is here, we have the quartz diorite intrusion, and then from there down here. Now, after eighteen months of study, having been over that ground, and seriously endeavoring to fathom the story there, this is the best that I can form; and I would say that the unfolding [674] of the book of nature is not so easy as it appears, although now having explained this in this way, I think any one would go back there, and realize it; yet, although it is so simple now; it was very complex for a long time; and, as I have said, this represents my knowledge, and it has come—I have not sat down as

(Testimony of Joseph Ralph.)

a seive, as it were, for knowledge to be poured into my brain, without effort; I have studied, myself, and what is here is the result of the consensus of efforts.

Mr. SPRINGMEYER.—You may cross-examine.

Cross-examination.

Mr. THATCHER.—(Q.) Mr. Ralph, do you know Mr. F. D. Brown's signature? A. Yes.

Q. Is that a photographic copy of his signature? (Shows to witness.)

A. That looks like a correct representation of his signature.

Q. I call your attention to the next succeeding page; is that a copy of your signature? A. Yes.

Q. Mr. F. D. Brown was your agent and attorney in fact in making application for patent of the United States on these claims; was he not? A. Yes.

Q. Who was your attorney at that time?

Mr. SPRINGMEYER.—We object to that on the ground it is immaterial. Is it pertinent to something you don't wish to disclose?

Mr. SPRINGMEYER.—Yes, sir; it is cross-examination. I will not impose on the Court.

Mr. SPRINGMEYER.—Very well.

Mr. THATCHER.—Q. Who were your attorneys, Mr. Ralph? A. Gustin, Gillette and Brayton.

Q. And did they prepare the application for patent, and the various papers that were prepared, preliminary to this proceeding? [675]

A. Yes.

Q. Did you assist them in the preparation of the papers?

(Testimony of Joseph Ralph.)

A. Well, only in a cursory way; I would have to assist in the way of giving them data.

Q. Data and things of that kind? A. Yes.

Q. Did you assist them in the preparation of the mineral affidavit which was signed by Mr. Brown, on the mineral character of the ground?

A. Anything like that I would have to.

Mr. THATCHER.—I want to offer this in evidence, if the Court please, in cross-examination; it is a certified copy of the affidavit of mineral character.

Mr. SPRINGMEYER.—What is the purpose of it?

Mr. THATCHER.—It is merely offered in evidence; and if not used on cross-examination, it can be stricken out.

(Mineral affidavit is marked Plaintiffs' Exhibit "A-9.")

Mr. THATCHER.—(Q.) Mr. Ralph, I understand you these sections represent; first, on the west, the limestone? A. Yes.

Q. As we come up the canyon that is to the west?

A. That is the blue.

Q. Next we find the quartzite, and following the quartzite, the alaskite?

A. I am talking about east and west.

Q. I am starting at the west; and I am going east.

A. Yes.

Q. Just as if a knife had been run right down across the canyon? A. Yes.

Q. Of the formation, and you were looking right at it, this is what you would see, is that right?

(Testimony of Joseph Ralph.)

A. That is a representation.

Q. Then after you go beyond the alaskite, what do you find there, do you know? [676]

A. I had enough to do to look after the canyon.

Q. All I want to know is what you know. How far does the alaskite extend with reference to any of these claims; how far easterly from the Salt Lake No. 3, Midas and Evening Star, so far as these claims are concerned, and within the boundaries?

A. The ridge, eastern ridge, above all of the claims, which separates the Copper Canyon from—I don't know whether it is Box Elder, but the highest ground, if you are walking up to the old mine, right to the saddle-back, is alaskite.

Q. Then, as I understand you, with the exception of what may follow along this easterly line, if there are any other claims above the sixteen claims within this patent application, the general formation is alaskite? A. The general formation is alaskite.

Q. And possibly some other various intrusions?

A. Yes.

Q. At any place within the alaskite are there any intrusions or contacts of porphyry and limestone?

A. There may be, I don't know.

Q. To your knowledge, are there any?

A. Porphyry?

Q. Porphyry, yes, sir.

A. Well, there is no such rock as porphyry.

Q. Well, what is commonly known as porphyry?

A. You can speak of a porphyretic rock; in other words, another igneous intrusions?

(Testimony of Joseph Ralph.)

Q. Yes. A. Different in character from that?

Q. Yes. A. Different in character?

Q. Different in character.

A. I would not say so.

Q. Is there any place within the boundaries of this patent application contiguous between the lime and porphyry?

A. Now, whether there is limestone on the higher ridge on the west, up beyond the main dioritic intrusion, I don't know. [677]

Q. You mean the west? A. On the west.

Q. Your claims, however, all lie to the east, do they not?

A. No, what I mean to say is, as we go north of here, there is this quartz diorite in massive form.

Q. As you go north?

A. As we go north, and then up farther, and getting towards the northern end of the property, on those high ridges up there, I have never been.

Q. Do you know of any veins or lodes or mineral-bearing areas within the boundaries of this patent application lying on contacts between porphyry and limestone? A. These three claims?

Q. No, any of these sixteen claims. A. No, sir.

Q. Do you know of any of them lying on contacts of alaskite—we will use the word alaskite—and limestone?

A. As I say, at the northern end of the property there are geological conditions there which I have not investigated.

Q. But I am asking you what you know.

(Testimony of Joseph Ralph.)

A. With reference to the south part I can speak, of the north part, I can't.

Q. But do you know of any ore bodies or veins or lodes lying on contacts between lime and porphyry, or lime and alaskite, within the boundaries of any of your claims?

A. I don't know of my personal knowledge.

Q. You don't know of your personal knowledge?

A. No.

Q. Have you had any information concerning such lodes, veins or mineral deposits?

A. Information in what respect?

Q. Well, any respect.

A. That is a broad question, if I had any information in this respect—in what respect?

Q. Of any veins or lodes or mineral-bearing rock lying on a contact of lime and porphyry, or lime and alaskite, within the boundaries of these claims. [678]

A. In relation to this patent application?

Q. Yes, sir.

A. To a detail of that nature I would not give my personal attention.

Q. You would not? A. No, sir.

Q. That is mere detail? A. Yes.

Q. Did you ever see Mr. Brown's affidavit before he made it out—I call your attention to that. (Hands paper to witness.)

A. (Reading:) "F. D. Brown, being duly sworn upon oath deposes and says."

Mr. SPRINGMEYER.—Do you want him to read it out loud?

(Testimony of Joseph Ralph.)

WITNESS.—I am not fond of reading out loud.

Mr. THATCHER.—I don't care to have you read it out loud.

Q. Do you know whether or not that was made under your direction or from any information that you gave to your attorneys for the benefit of Mr. Brown?

A. I certainly never outlined that; it was prepared by Mr. Gilette.

Q. The mineral character of the land and the affidavit of mineral character, was a detail left to Mr. Gilette?

A. Well, they received my first general instructions, because Mr. Gilette would never have patented the claims without my general instructions.

Q. I know, your general instructions, but the detail was left to him. Then Mr. Gilette is responsible for the statements in here with reference to the mineral character, as generally found throughout the Battle Mountain Mining District, and consists of limestone and porphyry, and that the valuable ore is usually found in contacts between the limestone and porphyry, and that in developing said claims said owners have worked in well-defined veins and deposits, carrying gold, copper and other precious [679] metals, and at various times they have uncovered, and so forth, and that the formation of the claims herein applied for is similar to that of adjoining claims. That you would have to leave to Mr. Gillette; you would hardly want to be responsible for that, I understand, Mr. Ralph?

(Testimony of Joseph Ralph.)

A. There are some things as regards the geology in there that I would not want to be responsible for.

Q. You would not want to be responsible for this: That the formation was limestone and porphyry, and such as was generally found in that district?

A. In my last testimony here, I testified there was porphyry and limestone, I believe; and in my little discussion this afternoon, I have not endeavored to look wise about that matter, when I have talked in that way; I have frankly given you the result of my education for the last eighteen months; I knew the conditions there.

Q. Then the result of your observations which you have told the jury, is the result of your observations in the last eighteen months, since the location of the placer?

A. It is the refinements of my geological knowledge of Copper Canyon, and is the result of my earnest investigation during the last eighteen months.

Q. Your present testimony, then; is the result of a leaching process that has gone on, and this is what you have arrived at, is that right?

A. What do you mean by leaching process?

Q. Well, you have given the best of it for this length of time?

A. As I told you at the last trial, neither I nor any one else, not even the United States Geological Survey, had ever made any investigations of the canyon; not a word had ever been written on the canyon; not a word along geological lines had ever been written, to the best of my knowledge, since Clarence King's in

(Testimony of Joseph Ralph.)

1869–73, in his Fortieth Parallel. [680]

Q. You were rather positive on your testimony at the last trial, were you not?

A. Not geologically, I was not.

Q. You were not positive geologically? A. No.

Q. Now, let me ask you something else with reference to this (referring to Defendant's Exhibit No. 36); this point you have marked in here "Copper Canyon," this little black streak?

A. Yes; that, and this; I have not put in any alluvial soil, or moss, or sagebrush.

Q. That was left to the Lord?

A. That was left to the imagination.

Q. Mr. Ralph, you testified with reference to the Farrin adit, did you not? A. Yes.

Q. This is the Farrin adit, is it not, Mr. Ralph? (Indicates on map.) A. Yes.

Q. Marked off to one corner here "Farrin adit"; how far is the entrance of that northerly from the Salt Lake No. 3—from the northeast corner of Salt Lake No. 3?

A. Approximately three hundred feet.

Q. And it runs in an easterly direction, as I understand? A. Yes, sir.

Q. You say that that would economically develop, these claims?

A. No; I didn't say it would economically develop if you are going to use the word "economic" as an adjective.

Q. How did you say it?

A. I said on the principle of economic contiguity,

(Testimony of Joseph Ralph.)

it could apply very well. For instance, if you ask me whether that would be an economic way, using it as an adjective, it would not be economic.

Q. Well, do you consider it of economic value with reference—not economical, but do you consider that Farrin adit of economic value with reference to the development of these claims? [681]

A. I can very well see that it might have been of great economic value.

Q. You testified that it was of great economic importance in the development of these claims, did you not?

A. I didn't testify that it resulted in great economic importance to those claims, but the idea in driving it was of economic value.

Q. Was of great economic value in these claims?

A. Yes, sir.

Q. Could that in any wise, if it continued in its same direction, or in any direction, ever cut the Salt Lake No. 3?

A. If it was continued as an adit?

Q. Yes. A. No, sir.

Q. Taking it on the same level that it is now run, or always has been run, could it ever have cut the Salt Lake No. 3; running directly ahead, or in a circle, or any other way?

A. It might touch it, but it would not amount to anything.

Q. It would not amount to anything?

A. No, sir.

Q. In what way did I understand you to say it

(Testimony of Joseph Ralph.)

would tend to develop the Salt Lake No. 3; the Midas and the Evening Star?

A. If the main copper lode had continued north through the diorite, the Farrin adit would have intercepted it, and if any feeders from that had either come southerly, or if there were other claims intervening between the Virgin shaft and the Salt Lake No. 3, that adit would have intercepted them, and then would come the matter of drifting on those veins, and if the drifting was southerly, a shaft there sunk would not only develop Salt Lake No. 3, but also be of direct physical contiguity with the main Virgin ore body; in other words; they could very well by drifting on intermediate veins come down there practically between the Virgin Shaft and the Salt Lake No. 3; crosscut east; tap the Virgin ore body, the copper ore body, crosscut west, and [682] come to the Salt Lake No. 3; and into the quartzite.

Q. Could they do that on the same level, running from the same level that the Farrin adit is?

A. No, as I testified, the adit is two hundred and fifty feet higher than the bottom of the virgin shaft.

Q. It is two hundred and fifty feet higher than the bottom of the Virgin shaft? A. Yes, sir.

Q. It would have hit the Virgin shaft then in about the middle? A. Yes.

Q. How much higher is the Virgin shaft than the Lake No. 3?

A. The Virgin shaft lateral developed from the bottom—

Q. No, from the top, the collar of it; how much

(Testimony of Joseph Ralph.)

higher is the collar of the Virgin shaft than Salt Lake No. 3?

A. Approximately two hundred and twenty-five feet.

Q. Then it would have been impossible; running on the same level of the Farrin adit, to have ever encountered the Salt Lake No. 3 ground—run into it?

A. Of course it would.

Q. If it had run in any direction you might have wanted to make it, it could not possibly have hit Salt Lake No. 3?

A. If it had wandered around and made all kinds of courses, it never would have reached Salt Lake No. 3.

Q. Nor would it ever have reached the Midas or the Evening Star?

A. I am not so sure about the Midas. There would be ample margin to get in the Midas ground.

Q. It might have got into the Midas?

A. I say ample margin; this map is not sufficiently large; I have a map here which is from my official mine map, which will give you the exact measurements, if you desire them.

Q. How far would any drift, cross-cut or excavation from the Farrin adit have had to be driven to have hit the Midas? [683]

A. It would have to go across Salt Lake No. 3, 1500, and 300—1800.

Q. And how deep would it have been?

A. If you will let me get out my mine map, I can give you the feet.

(Testimony of Joseph Ralph.)

Q. Well, you may refresh your memory afterward. You said the Virgin shaft dipped which way?

A. West.

Q. Which way does the Virgin vein dip?

A. The Virgin shaft is on the main Virgin vein, sunk on the vein.

Q. Does it dip to the west, too, that vein?

A. Yes, sir.

Q. Generally, how do the veins in the district dip?

A. The Virgin shaft in following the vein on its course, dips 60 degrees westerly.

Q. That wasn't what I asked you.

A. And the other ore bodies, the Superior ore body, which is distant about 300 feet, I have never taken its angle, but it dips westerly also; and the main copper ore bodies, copper veins, all dip west on that Virgin hog-back.

Q. On that Virgin hog-back. Have you ever had any occasion to express your opinion of the Farrin adit? A. In what way?

Q. Any way.

A. I have covered it in my report to the Glasgow people, in 1912.

Q. What did you tell them about it?

A. I don't remember now what I told them.

Q. What was your opinion of it then as a mining proposition, or as a piece of mining work?

A. I think I could devise a better scheme towards developing the canyon.

Q. No, what was your opinion at that time with reference to that piece of work, Mr. Ralph?

(Testimony of Joseph Ralph.)

A. My opinion on that particular piece of work; it may not have [684] been treated at all.

Q. What?

A. It may not have been touched upon at all, in my report to the directors.

Q. What is your opinion of it now?

A. Well, I have told you that if I were going to devise a central scheme for the development of the canyon; it is possible that I might develop a better one—it is a matter of opinion.

Q. I call your attention to this paper, and ask you if that is a true copy of the report you made to the company on the Copper Canyon property? (Hands to witness.)

A. This is not a report which I made for Glasgow; it appears to be a report written by myself, probably some time last year, and mimeographed, for the purpose of sending to any one who might write for general information on the property.

Q. To whom was that submitted—anybody?

A. This?

Q. Yes. A. No, sir.

Q. Just a general report that you got out?

A. Yes, sir; that has been submitted to no one.

Q. I call your attention to page 3, and ask you if that is the Farrin adit that you referred to there; near the bottom of the page in the last paragraph?

A. What is the question?

Q. Is that the Farrin adit? A. Yes.

Q. And in that you described. (Reads:) "In order to obviate a question on the part of any examining en-

(Testimony of Joseph Ralph.)

gineer as to why this adit should have been run, I advance the information that everything tends toward showing that this piece of work is badly conceived, purposeless, and hopeless of attaining any results. If this adit were continued in such a way as to swing southerly from a point where it now terminates, it would eventually break into the upper workings of the old Virgin Mine, and therefore no [685] productive results could be anticipated from that direction. On the other hand, if it were swung north, in order to admit development of the impregnated copper which I have spoken of under the preceding head, then the objective point is so far away that a far more economic precedure of exploitation could be readily devised." Was that your opinion of it at that time?

A. That was the opinion from that standpoint.

Q. And is that your opinion of it at the present time from the same standpoint?

A. We are looking at it now where they started that Farrin adit, in the hope that those lodes would continue through the diorite; and if there were intervening lodes, then the scheme would work; but as the scheme didn't work, it is now very easy to come back and condemn; as I said before, they took a big gamble there, a very big gamble—I would not take it myself.

Q. There were no lodes discovered in the adit, were there? A. Yes, there are some lodes there.

Q. Not of any value particularly, were they?

A. Well, there are lodes there of copper.

Q. But you were keeping it a secret at that time?

(Testimony of Joseph Ralph.)

A. No, they are to be seen there to-day.

Q. Now, going up to the Salt Lake No. 3; what work was done on the Salt Lake No. 3 by you in 1913, prior to the location of the placer claims?

A. The only work that I remember of doing on Salt Lake No. 3 is that shaft in the southwest corner.

Q. In 1912, going back one year, what work was done upon that ground?

A. Well, I was there in the end of December, and I can only speak in a general way of what work was being done; the only thing I could see the men working around the road there, and on the mill, I could not say exactly what they were doing. [686]

Q. During the whole year 1913, isn't it a fact the only work done on that claim was the building of that road to the mill and the building of that mill?

A. 1913?

Q. 1912.

A. I don't know; I was only on the property for about ten days the last month of the year.

Q. To your knowledge, was any other work done on that ground, except that?

A. I don't know; I have no idea; I was only on the ground ten days in that year.

Q. Only on the ground ten days during the year 1912?

A. Approximately, I believe I was there about ten days in December.

Q. About ten days in December, 1912?

A. Yes, I would imagine.

Q. You testified to veins crossing the road; when

(Testimony of Joseph Ralph.)

did you first see those veins?

A. In going up the road with Captain Case.

Q. In 1912? A. In 1912.

Q. Which way did those veins run?

A. They ran east of south and west of north, it is a general trend; the general trend is northerly and southerly, but more east of south and west of north.

Q. Did they cross the road?

A. There are some veins there, there is one there that I traced across the road.

Q. I am asking you of those you saw in 1912.

A. I didn't pay such close attention to them in 1912.

Q. You didn't pay much attention to them in 1912?

A. Oh, yes, I paid some attention in 1912.

Q. How much attention?

A. Well, the veins on the road—every foot of that road is in blasting rock, and one could not walk up that road without seeing [687] them, and I remember noting them, and commenting on them when going up there with Captain Case.

Q. In 1912? A. In 1912.

Q. Did they run across the road?

A. The veins there, there are some undoubtedly which pass across the road, I could not swear that there is a vein there crossing the road, because on the outer rim of the road there is still wash and debris, so the cut in the road now represents a "V"; it has been removed, and then the wheels going over that dirt, has churned it up into dust, so that no one could see a vein crossing there, unless he went there and

(Testimony of Joseph Ralph.)

cleared away that debris to investigate, which I did not do.

Q. These veins were exposed in the bank of the road, were they? A. Yes.

Q. And you saw them there in 1912? A. I did.

Q. And their trend and course were such as if continued, they would cross the road, is that what you want to be understood as saying? A. Yes.

Q. What was the strike of those veins?

A. Those crossed the road not at right angles.

Q. They would not have crossed it at right angles?

A. No, but they would have crossed the road.

Q. And would they have generally followed parallel to the side of the claim?

A. No, I say they would not.

Q. You would say they would not?

A. No, I say they would have passed out of the east side line somewhere, they would not parallel.

Q. They would have passed out the east side line; you mean they would have gone like that (indicates on map); mark on the map how you think those veins were going. [688]

A. Oh, no, I am mistaken; (draws on map) I would say, roughly speaking, from memory—

Q. Don't put it too far, I don't want to put it too far down on my map.

A. We have had a fight on this vein, I want a good vein; I want to have a good look at it while I am at it.

Q. Now, that was the course and direction of the veins which you saw there in 1912, exposed on the road?

(Testimony of Joseph Ralph.)

A. With the exception of the one on which I eventually sunk the shaft, and that has a different course.

Q. Did you see that vein in 1912?

A. That was the biggest vein there.

Q. Did you see that vein in 1912?

A. I must have seen the vein there in 1912.

Q. Now, did you see it?

A. I have given you my answer.

Q. Can you say yes or no, that you did see it or you did not?

A. I called Captain Case's attention to the veins on that road; the vein on which the shaft was sunk is the biggest, and the only important one there, so although I cannot remember the exact morning or the exact words; I would say, and I would say it on oath to be satisfied, that I must have seen that vein; I can't make a mental picture of my attitude when I told him, but that is the only vein on the road which is of any economic worth.

Q. Then that is the only vein on that road of the kind which you say a reasonable man, reasonably prudent man, would be justified in spending his time and money in developing?

A. Yes; the other ones don't amount to very much.

Q. The other ones, as a matter of fact, don't amount to anything, do they? A. Not very much.

Q. Getting down to cases, that is the only one that amounts to anything? A. Yes.

(RECESS FOR FIVE MINUTES. AFTER RECESS.) [689]

Q. Then as I understand you to say, the veins

(Testimony of Joseph Ralph.)

which cross the road are of no particular importance?

A. Not where they crop out on the surface.

Q. And so far as the indications show at this point, and so far as you have been unable to ascertain, they are not such as would justify location by a reasonably prudent man, justify him in spending his money and time on them?

A. On the seams there, no, I would not say so.

Q. Those that cross the road?

A. Yes. Wait a minute. I think the vein on which the shaft is sunk, after trending east, crosses the road, though.

Q. Eliminating that one.

A. There is nothing there in those other ones to be of great economic importance.

Q. Then I understand the one you do think of economic importance is the one on which the shaft was sunk, and runs along the road?

A. Prior to 1914?

Q. Well, any time? A. Any time, yes.

Q. Up along that direction? A. Yes.

Q. Now, where do you think that might cross the road, northerly or southerly from the shaft?

A. I am not going to try to define that for the reason that when I came here for this trial, I hadn't the least idea that that four-foot vein would be ruled out; if I had, I would have given close detail to the other things, which might probably have revealed lodes which would come right down through the claim; I think I can go there on the Salt Lake No. 3,

(Testimony of Joseph Ralph.)

and find evidence on the surface, right down through, approximating a lode line; but I imagined with a four-foot vein I didn't have to go any further, therefore I didn't give the examination; but I am not going to say that there are no veins there which do not go down that way, or don't come down that way. [690]

Q. I am not asking you that, I am asking you of those that you know; I don't want you to say that there are no others there, because I don't ask you that; but, so far as you know, does the vein which runs along the road, on which the shaft is sunk, we will designate it that way, cross the road?

A. I have not traced it.

Q. You could not say whether it does cross the road or not?

A. There are outcrops below the road, I could not say whether it is the same, I have not connected them up.

Q. You could not say whether that vein on which the shaft is sunk crosses the road, that is correct, is it? A. Yes.

Q. You haven't traced the extent of that vein, have you? A. Haven't traced it?

Q. Have you traced it on its strike to any extent other than the shaft itself?

A. Only in a very cursory way.

Q. How far?

A. I could not positively swear that that vein goes away six or eight feet from the road, because in the road it is all cut up, and there is dust.

(Testimony of Joseph Ralph.)

Q. I am not talking about the road; it follows the road, doesn't it, parallel with it?

A. Where the shaft is sunk it is almost parallel with the road.

Q. Parallel to the road; now did you trace that vein northerly along the road, or southeasterly along the road at all from the shaft? A. Yes.

Q. How far and in what direction?

A. Oh, I would only say a few feet.

Q. A few feet?

A. That is all I can see in my mind's eye.

Q. How far northerly from that shaft?

A. That would go northwest.

Q. Well, northwesterly.

A. I don't think I have traced it up over the bank; I don't think I have climbed up on the bank [691] from the road at that point; to the best of my knowledge it can be seen cutting up the bank there, but after it gets into the sagebrush I don't remember ever having climbed on the bank to follow it.

Q. Do you remember having seen that vein or tracing it beyond the northwest face of the shaft?

A. To the best of my knowledge it does.

Q. Well, do you remember of ever tracing it, or seeing it beyond that point?

A. To the best of my remembrance I would say yes.

Q. How far?

A. I have already said I have not traced it beyond the bank.

Q. Well, how far is the bank?

(Testimony of Joseph Ralph.)

A. The bank is high; I am speaking now,—that vein there would be seen, it would be appearing in the face, and I have never got on that bank to see whether it goes into the formation beyond or not.

Q. Did you ever trace it southeasterly from the shaft, from that wall, the southeast wall of the shaft, or face of the shaft?

A. To the best of my knowledge of that, I can't remember, or I can't make a mental picture of having seen that lode actually exposed more than about possibly ten or twelve feet.

Q. Can you say you did see it exposed ten or welve feet? A. I would say so, yes.

Q. You would say so? A. Yes.

Q. As a matter of fact that lies—we will say this is the road, and this is the bank, and the shaft is sunk just like that, isn't it? (Illustrating.)

A. Yes, but not exactly parallel in my remembrance.

Q. Not exactly parallel to the road?

A. I don't think it is; I think it veers off slightly to the east; the footwall exposed in the shaft is not exactly parallel with the road. [692]

Q. The footwall is not?

A. Yes; that is, the plane, the footwall plane of that lode, and the line of the road, run parallel.

Q. The line of the road and the footwall of the shaft run parallel? They are pretty near it, aren't they?

A. Well, it is so close that it doesn't slue around in any pronounced way, but still they are parallel.

(Testimony of Joseph Ralph.)

Q. And when, may I ask you again, did you first see this vein?

A. I have told you all that I can tell you.

Q. Did you tell the Court at the last trial of this case anything about this vein?

A. I don't remember.

Q. You don't remember whether you mentioned it or not. Isn't it a fact that at the last trial of this case, the only veins that you mentioned were those crossing the road?

A. It may have been, I don't know what I testified to.

Mr. THATCHER.—I want to offer this map in evidence, if the Court please; it was identified by Mr. Liddell as having been used on the last trial. Is there any objection?

Mr. SPRINGMEYER.—We have no objection.

(The map is admitted, and marked Plaintiffs' Exhibit "A-10.")

Mr. THATCHER.—(Q.) I call your attention to a map marked Plaintiffs' Exhibit "A-10," on file in this court, which was Mr. Liddell's plat introduced on the last trial of the case; do you remember that plat?

A. Yes, I gave it to you the other day.

Q. I call your attention to Salt Lake No. 3 as delineated on that map. A. Yes.

Q. I call your attention to an arrow, and above it the word "Arrow"; do you remember putting that on there? A. Yes.

Q. Do you remember putting these marks cross-

(Testimony of Joseph Ralph.)

ing the road? A. Yes. [693]

Q. What did they represent?

A. The trend of those veins you are speaking about.

Q. Of those veins we are speaking about?

A. Yes.

Q. Isn't it a fact that they represented the veins or lodes which you told the Court at that time you found on Salt Lake No. 3 on or near the road?

A. That is the same ones I have just been putting the line over there.

Q. And these are the only veins that you told the Court about at the last trial, are they not?

A. I don't know; you have a transcript of that evidence; I don't think you will find any conflict.

Q. Do you know whether you spoke of any other than three veins crossing the road at the last trial?

A. If I was not asked, or if the point was not brought out, I might not have mentioned it.

Q. I call your attention to a transcript of the testimony taken on the last trial, in the case of Glasgow-Western Exploration Company against Guy Davis et al., tried in December of 1913, and ask you if you testified at that trial as follows, page 16 of your testimony. (Reads:) "Which direction does the vein which crosses the road on the Salt Lake No. 3, run? A. (Sketching on map.) Roughly so; that is the road. That would approximate the strike of the lodes. Q. And it was from those lodes on that road that you took your samples? A. I took three there." Did you so testify? A. Yes.

(Testimony of Joseph Ralph.)

Q. At the last trial of this case you only took three samples from the Salt Lake No. 3?

A. I don't remember.

Q. You don't remember? A. No.

Q. Now, you say at that point there is hard rock crops out there? A. Yes, sir.

Q. Have you ever been up to point 28? [694]

A. Probably I have been there, but I don't remember of being there.

Q. Did you ever examine that shaft there at point 28? A. No.

Q. Did you ever examine either of these two shafts in the northwesterly corner of the claim? A. No.

Q. You don't know what the character of the formation there is? A. No.

Q. What is the general slope of the hill and country from the location monument, west?

A. It goes up.

Q. Up? A. Yes.

Q. Now come down to this shaft that you sunk in the southwest corner of the Salt Lake No. 3, how deep was that, do you remember?

A. I believe it was about fifteen or sixteen feet deep.

Q. Do I understand you to say that you estimate the value of that at one hundred dollars?

A. That is what it cost me.

Q. What was that estimate based upon—what were the wages paid at that time?

A. Four dollars a day.

Q. That was the general wage in that district?

(Testimony of Joseph Ralph.)

A. I was paying four dollars, and then I reduced to three and a half, and my men quit me. I don't think anybody worked for three and a half very long.

Q. You were paying four and reduced to three and a half and your men quit you? A. Yes.

Q. Now, this vein in the lower part, you were not at the bottom of it—at the bottom of that shaft?

A. No, sir.

Q. What was the purpose of that shaft, was it for the purpose of exposing a lode or vein in place?

A. No, sir.

Q. What was its purpose? [695]

A. It was for the purpose of sinking down to see whether there was any trespass.

Q. You were prospecting for trespassers, were you? A. Yes, sir.

Q. I think that is the way you designated it on the last trial? A. A very good designation.

Q. Prospecting for trespassers here. Now, with reference to the Midas, what was the purpose of that work? A. After the same sort of panning.

Q. Same sort of what? A. Panning.

Q. Panning—you were prospecting for trespassers again?

JUROR.—(Q.) What do you mean by trespassers?

A. There had been a suit brought in this court prior to the last suit—this is the third suit; the first suit was brought for the purpose of securing an injunction to prevent some parties from trespassing

(Testimony of Joseph Ralph.)

on Salt Lake No. 3, two men by the name of Davis and Holmes.

The COURT.—I don't believe it was necessary to go into that.

JUROR.—I thought it was some term of mining they had, when he used the word trespassers in connection with pannings.

WITNESS.—Well, it was for trespassers, in order to see that there was no trespassing from outside ground into Glasgow-Western ground.

Q. (Mr. THATCHER.)—And the other shaft which was sunk on the Evening Star, that was for placer mining, was it? A. Not altogether.

Q. Did it go into the hard rock at all? A No.

Q. It went down to bedrock and then followed the bedrock? A. Yes.

Q. For a distance of about thirty-three feet?

A. Yes; fifty-eight altogether. [696]

Q. You testified with reference to that Evening Star claim that you found a vein at this point marked 20 on Exhibit "A," and 60 on Mr. Tibbey's map?

A. Yes.

Q. Did you tell us anything about finding a vein at that point at the last trial?

A. I don't remember.

Q. You don't remember? A. No.

Q. Do you remember whether or not you said you found a vein at this point at the last trial, that is, point 24 on Exhibit "A"?

A. I don't remember what I testified to with regard to those places.

(Testimony of Joseph Ralph.)

Q. You don't?

A. No; you have the transcript there.

Q. With reference to the samples taken at the last trial: "Mr. PLATT.—(Q.) Are you familiar with the workings upon the Salt Lake No. 3; the Midas and Evening Star mining claim? A. Well, yes, fairly familiar. Q. Did you ever take any samples from any of the so-called lodes or veins in any one of these claims? A. Did I take samples? Q. Yes. A. Yes. Q. On what claims, please? A. I took three samples on the Salt Lake 3, and two on the Midas, and one on the Evening Star." Did you so testify, calling your attention to page 5 of your testimony at the last trial?

A. I must have if it it is there, yes.

Q. Do you want to be understood as saying that the vein exposed here is the same vein as exposed in the lower cut—the vein exposed in 20 is the same as exposed in 24?

A. As I said in my testimony, the two, in order to link them up, there has to be work done, and there are very strong signs that the vein exposed in those two places, and also the vein exposed on Lemaire's ground on the south, are on the same general course.

Q. The vein exposed on Lemaire's ground on the south? A. Approximately, yes. [697]

Q. Do you mean to say this same vein is exposed on Lemaire's ground on the south?

A. There is a vein or lode exposed over there, and there are some very strong characteristics between that and the Evening Star discovery.

(Testimony of Joseph Ralph.)

Q. This vein you found on the Evening Star, how big was it down at point 24?

A. At that point, as near as I remember, one wall at least was not exposed, and I am not sure whether they both were.

Q. Well, you have been out there lately?

A. Oh, yes, I can tell you how it is now.

Q. Are they exposed now?

A. No, there is no wall there.

Q. No walls now? A. No, it is a wide lode.

Q. No walls in sight? A. No.

Q. So far as coloring is concerned, there is a material difference to the eye between the material taken from cut 20 and that of 24, is there not? (Witness looks at book.)

Q. You can tell me, you don't need a memorandum, do you?

A. No, sir, I don't want a memorandum; my samples three and four handed in to-day, illustrate that. I was simply looking up the number, I knew what the character of the rock was.

Q. Without that, what was the color, the general color of the rock in cut number 20?

A. That is the discovery?

Q. That is the big cut east of the location monument.

A. One is very strongly iron, and considerably porous; the piece of rock that that gentleman there took in his hand (indicating juror); I don't remember, and the other is very white, and leached and kaolinized.

(Testimony of Joseph Ralph.)

Q. Have you ever followed along that line from point 20?

A. I have been from one point to the other several times.

Q. It is a fact, is it not, that generally all along that line between the two, it is covered with sagebrush and wash? [698]

A. All of that hill will have here and there a wash, and the formation will be jutting out here and there; it is not all submerged to my knowledge there.

Q. Isn't it just the other way, you find wash all over, and here and there a cropping across that hill; from point 20 to point 24 isn't it a fact it is all wash, except here and there there might possibly be a cropping?

A. No, I rather think on that particular hill the wash is rather deeper than at other points, although at one or two points the cropping is even more pronounced again; but taking it from the standpoint of area, I am of the opinion that that discovery there; the wash is rather profuse.

Q. In this report that you made did you say anything in any part of that report with reference to the Salt Lake No. 3 as a lode claim, or the Midas and Evening Star as lode claims?

A. I have not mentioned a single claim of the group here as a lode claim.

Q. You haven't mentioned a single claim throughout that? A. No, not as a lode claim.

Q. However, you did divide that group of sixteen claims into four features, did you not?

(Testimony of Joseph Ralph.)

A. Three or four.

Q. Do you remember how you divided them?

A. As near as I remember—

Q. Do you want to use this?

A. Why, yes, I might as well. (Counsel hands paper to witness.)

A. Number one the zone of the old mine workings on the Virgin and Superior lode, which I have mentally classified for my own guidance as the Virgin hog-back; at the southern end of the property; the disseminated copper showing at the northern end of the property, and the placer gold possibilities in the gulch of the property. [699]

Q. And that was the way you classified this property in making your report as to the general conditions prevailing over the property?

A. That is the way I did it.

Q. And that is a pretty good classification of it, too, isn't it, Mr. Ralph?

A. I think I would do it again.

Q. I believe you testified that Salt Lake No. 3 in your opinion was in 1913, before the placer claims were located, a lode of such value, and contained mineral of such character as would justify a reasonably prudent man in developing it?

A. My conclusion has been more than justified by results.

Q. More than justified by results? A. Yes, sir.

Q. But were you of that opinion in 1913?

A. I backed it by running in that cut, and found a four-foot vein.

(Testimony of Joseph Ralph.)

Q. Were you of that opinion with reference to the Salt Lake No. 3 in 1913—no cut on that claim?

A. I would have located it, certainly.

The COURT.—Can you answer that, yes or no?

A. Will you put the question again, if you please?

(The reporter reads the question.)

A. Yes, I have located claims on worse showings.

Mr. THATCHER.—(Q.) You think it would at that time have justified a reasonably prudent man in developing it? A. Yes.

Q. On the showing that was there at that time, as a lode claim? Yes, sir.

Q. And would you say the same thing with reference to the Midas and Evening Star claims?

A. Yes.

Q. They were of such a character as would justify a reasonably prudent man in spending his time and money in developing them? A. Yes, sir. [700]

Q. Did you appear before the tax commission?

A. Yes.

Q. In October of 1913? A. Yes.

Q. After the placer claims were located?

A. After the placer?

Q. In October of 1913? A. If I remember—

Q. Before the trial?

A. Well, I appeared before the tax commission.

Q. Did you at that time say in the presence of Mr. Shaughnessy and Mr. Colburn, members of the tax commission, in response to a question by Mr. Shaughnessy, as follows: "Q. Mr. SHAUGHNESSY.—And in Copper Canyon how many are

(Testimony of Joseph Ralph.)

there? RALPH.—I believe there are five. COLBURN.—Are you applying for sixteen more there? RALPH.—Yes. You see there will be a chance for the company to get even as regards valuation. For instance, those sixteen we are applying for, some of them have not a smell of ore on, but they can be located and held on the principle of being contiguous to adjacent claims, and with the sixteen there now, roughly there will be twenty claims come under the laws next year if the patents are sustained. I received an intimation that there is a notice now in the surveyor-general's office, and I will know in the course of ninety days." Did you make such a statement? A. Yes, and I would make it again to-day.

Q. Make it again to-day, that on these sixteen claims there is not a smell of ore?

A. If a person knows what ore is and how it is defined.

Q. What ore is? A. What ore is.

Q. Well; is there ore on these claims?

A. On some of them there is no ore. Ore is mineralized material which can be worked at an economic profit, an actual commercial profit; that is the definition of ore according to the Institution of Mining and Metallurgy. [701]

Q. Now, after defining ore will you define a "smell of ore"?

A. Well, a smell is a smell, I can't come much closer than that.

Q. Prior to September, 1913, had there ever been any ore developed on Salt Lake No. 3, Midas or Evening Star?

(Testimony of Joseph Ralph.)

A. I was never on Salt Lake No. 3; Midas or Evening Star until practically the end of December, 1912.

Q. Read the question to the witness; I don't believe you got that.

A. I thought you asked as regards ore shipments prior to 1913.

Q. I don't care anything about ore shipments. Prior to September, 1913, was there any ore developed on Salt Lake No. 3, Evening Star or Midas claims? A. What do you mean by "developed"?

Q. Well, you are a mining man?

A. Well, I can give you my definition of development.

Q. Well, tell us.

A. The development of ore means the opening up of an ore body, either by lateral development or vertical, where the ore is exposed; now, if a vein existed in the ground, and a cross-cut entered that ground and cut that ore, it would be exposed, but it would not be developed; so on that term, if you ask me whether there was ore exposed, I will say yes; if you ask me whether any ore was developed, I say no.

Q. You make a distinction between developed and opened up?

A. Why, naturally, that is the logical definition.

Q. Was there any ore in sight on Salt Lake No. 3, Evening Star and Midas claim, in place as a lode claim, prior to September, 1913?

A. If you are going to define ore as mineralized material which can be shipped at an economic profit,

(Testimony of Joseph Ralph.)

I would say I don't know; but if it is exposed, why then we get back to the veins again, which I have already testified to. [702]

Q. Well, was there any ore in sight; as a mining engineer and a mining man, would you say there was any ore in sight on Salt Lake No. 3, Midas or Evening Star claims in September, 1913, or prior thereto?

A. There was no mineral exposed to the best of my knowledge, which would stand the cost of mining, transportation and reduction at a commercial profit.

Q. Would you say there was mineral-bearing rock exposed on Salt Lake No. 3, Midas and Evening Star, in any substantial quantity, of a valuation of five dollars, in sight in September, 1913?

A. On Salt Lake No. 3?

Q. Yes, sir.

A. There would be some in sight, but not developed; cut number 14 on Defendant's exhibit 5, and your number 2, there is vein matter cropping out which might be called ore, but I would hate to try to mine it and ship it.

Q. Was that in sight in September, 1913?

A. Of course there was ore in sight there, there was a cropping there.

Q. A cropping? A. Yes.

Q. Did it come to the surface? A. Yes, sir.

Q. It did? A. Yes.

Q. Did you hear Mr. Tibby's testimony?

A. Yes.

Q. Do you and Mr. Tibby disagree on that point?

(Testimony of Joseph Ralph.)

A. No, we don't disagree at all. Mr. Tibby testified that the vein crossed one side to the other. I can't bring in my four-foot vein, and now you take away my outcrop at the same time—give me something to fall back on. [703]

Q. Out side of that, was there anything on the Salt Lake No. 3?

A. At the cut—I will give you an illustration after a while; open cut 14, and on the road side, the veins there, they were all the veins in sight.

Q. Mr. Ralph, when did you come to this country?

A. I came to this country first in 1890.

Q. And you lived here for some little time then?

A. Thirteen years.

Q. When did you go back to England—you were a citizen and resident of England before you came here? A. Yes.

Q. And before the time when you say you took out your citizenship papers? A. Yes.

Q. You went back to England when? A. 1903.

Q. How long did you remain in England?

A. I didn't remain in England, I was traveling most of the time; London was my headquarters.

Q. Was that your residence in 1903? A. Yes.

Q. How about 1904? A. And 1904.

Q. How about 1905?

A. I went to Norway in 1905, I believe.

Q. What time in 1905?

A. I think it was December, I am not sure.

Q. December, 1905?

A. No, wait a moment now—no, it was 1906, I think.

(Testimony of Joseph Ralph.)

Q. 1906? A. Yes.

Q. What month in 1903 did you go to England, do you recollect? A. I think it was May or June.

Q. May or June of 1903, and your residence was in London from then until some time in 1906?

A. Yes.

Q. Did you actually reside all of that time in England? [704] A. In England, yes.

Q. And from there where did you go?

A. To Norway.

Q. And from Norway where did you go?

A. To England.

Q. Back to England; and how long did you stay in England then?

A. I believe I returned from Norway to England in June, '08.

Q. And how long did you stay?

A. I believe I was in England then until some time in '09, I am not sure.

Q. And where did you go in '09? A. To Russia.

Q. How long did you stay in Russia?

A. The first time, only a month.

Q. And you came back then to England?

A. Yes.

Q. And then went out to Russia again?

A. Yes.

Q. How long did you stay in Russia the second time?

A. I think it was six or eight months, I am not sure.

Q. Where did you go when you came back—back

(Testimony of Joseph Ralph.)

to England? A. Yes.

Q. And from there where did you go?

A. To the west coast of Africa.

Q. And how long did you stay there?

A. One dry season, through one season.

Q. Is the West Coast a British province?

A. It is in the Gold Coast Colony.

Q. What do you mean by that?

A. That is the name of the province.

Q. Is that an English dominion? A. Yes, sir.

Q. Under the reign of Great Britain?

A. Under the British flag.

Q. And did you come back to London from there?

A. Yes.

Q. And then where did you go?

A. After a time I went to Burmah, to the upper Shan States. [705]

Q. When you left there did you come back to England again? A. Yes.

Q. And from there where did you go?

A. Came here, I believe.

Q. Came to this country? A. Yes.

Q. In 1912? A. Yes.

Q. Mr. Ralph, I don't want to be mistaken about this, you say that the vein you saw there actually cropped out of the ground, at point number 2; does it come out from under the overburden to the soil?

A. The cropping of that vein was against the big rock, as near as I remember now, which is there, the top of the big rock; I know there was enough there, where I pointed to the exact conditions to run that

(Testimony of Joseph Ralph.)

cut, it was that which led me to give the instructions to have the cut made.

Q. To run the cut? A. Yes.

Q. And you also, like Mr. Tibby, testify it is very hard to tell quartz from quartzite in this particular district, over these three claims, without the aid or assistance of the microscope; is that right?

A. Not where you see the thing in position.

Q. What?

A. Not where you see the thing in situation; you take a piece of vein quartz and a piece of quartzite, and change them, and say which is vein quartz and which is quartzite, that would baffle anyone; but if you see it in position, then it is localized, and it does not require five minutes consideration.

Q. Now this mill, so far as a mill, that was dismantled, was it not? A. Beg pardon?

Q. The mill has been dismantled? A. Yes.

Q. All of the machinery has been taken out of that? A. Yes.

Q. When was that taken out?

A. In 1914. [706]

Q. In 1914? A. No, pardon me, in 1913.

Q. And prior to the location of these placer claims, was it not? A. Yes.

Q. When was work discontinued on the Virgin shaft?

A. When the financial smash came in April, 1913, I believe.

Q. April, 1913?

A. Yes, I came out to Salt Lake City on the 31st

(Testimony of Joseph Ralph.)

of April, 1913, and I remember the men were all waiting there for their pay, and I associate a stoppage of operation with paying them off.

JUROR.—(Q.) What day of April was that?

WITNESS.—I landed in Salt Lake City on the 31st of April, 1913.

Mr. SPRINGMEYER.—(Q.) The 31st?

A. Well, the last day of April, excuse me, I should say the 30th.

Mr. THATCHER.—(Q.) Now no work was done on the Virgin shaft at that time?

A. No—pardon me, I believe I arrived in Salt Lake City the 31st of March; yes, it was the 31st of March; I correct that; I am a month out. I believe I sailed from Liverpool on the 18th of March.

Q. And no work was done on that claim after you got out there, some time in the latter part of March or the first of April?

A. Oh, yes, there was some work done.

Q. Well, I mean the Virgin shaft? A. Yes.

Q. There was? A. Yes.

Q. How long did it work after that?

A. I kept two engineers on there hoisting water to keep the leaching tanks in good order for some time, I forget how long, for several weeks.

Q. To keep the leaching tanks tight? A. Yes.

Q. Were any mining operations continued? [707]

A. The first mining operation done, I believe, was the sinking of that shaft in the southwest corner of the Salt Lake No. 3.

(Testimony of Joseph Ralph.)

Q. That was the first mining operation which was done upon this group in the year 1913?

A. Yes, practically speaking, I only did assessment work.

Mr. SPRINGMEYER.—Pardon me; he did not testify there was nothing done prior to April, 1913. I object to the statement on the ground it assumes a state of facts contrary to the evidence.

(By direction the reporter reads the last two questions and answers.)

WITNESS.—During the time I was there, I don't know what they did in January and February.

Mr. THATCHER.—(Q.) You don't know what they did in January and February? A. No.

Q. After you came there were mining operations carried on, the sinking of these two shafts, the shaft on Salt Lake No. 3, sinking the shaft on the Midas, and sinking this shaft on the Evening Star?

A. About eighty feet of shaft sinking.

Q. Sinking about eighty feet of shaft in the wash was mining operations for that year on those three claims? A. Yes. sir.

Q. Was any mining done in the Virgin shaft during that year by you? A. No.

Q. When were the last mining operations carried on in the Virgin shaft, if you know?

A. Right up to the shut-down, March, 1913.

Q. You shut it down then?

A. The men were not paid off, but I collected on the shipment of ore, and they were mining there right up to the shut-down.

(Testimony of Joseph Ralph.)

Q. Up to that time? A. Yes.

Q. What were they pulling out of the stopes at that time?

A. They were not pulling anything out of the stopes. [708]

Q. Were they taking out any ore?

A. Oh, yes, they made some good shipments.

Q. That was some ore already broken in the stopes, wasn't it? A. Coming from the solid face.

Q. That wasn't on any of these three claims, though? A. No.

Q. What work was done during the year 1913—did you say that this mill was for the benefit of these three claims? A. For the special benefit?

Q. Yes, or was it of any benefit to them—did you testify that it was?

A. I have not testified about it.

Q. Oh, you have not testified about it. That is all.

Redirect Examination.

Mr. SPRINGMEYER.—(Q.) Mr. Ralph, going from Copper Canyon northerly, do I understand you to say there is a change in the geological formation?

A. Yes, sir.

Q. What is the formation disclosed where the change occurs?

A. In going up Copper Canyon towards Galena, and getting beyond the quartz diorite intrusion, and beyond the northern claims of the company, we get into the sedimentaries, that is, there may be outcrops there, I have not examined it closely, because I have had no reason to do so, but in a general sense, you

(Testimony of Joseph Ralph.)

get out of the igneous and into the sedimentary; so that at one point there, about a mile and a half above the camp, we even get shale; the first shale came in there, and then getting over the other side—I should say above this shale the water level is within a very close distance to the surface, and you get over this shale and the water level drops five hundred feet right away; then going farther northerly over towards Galena, we get into the massive limestone; so there is a general change as we are going northerly.

Mr. SPRINGMEYER.—That is all.

(The mineral affidavit offered in evidence, and marked Plaintiffs' Exhibit "A-9," reads as follows:) [709]

**Plaintiffs' Exhibit "A-9"—Mineral Affidavit.**

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C.

May 21, 1915.

I hereby certify that the annexed copies of papers are true and literal exemplifications of said papers, from the original filed with Elko 01544 in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal] C. M. BENCE,
Assistant Commissioner of the General Land Office.

(Ten-cent Revenue Stamp.)

U. S. LAND OFFICE,
ELKO, NEVADA.
Filed June 22, 1914, at 9 o'clock A. M.

_____,
Register or Receiver.

APPLICATION FOR PATENT.

APPLICATION FOR PATENT FOR THE JOHN JOHN, BLUE JACKET, YELLOW JACKET, EAGLE, MIDAS, EVENING STAR, COPPER QUEEN, COMET, LUCY, REONA, SALT LAKE No. 1, SALT LAKE No. 2, SALT LAKE No. 3, SALT LAKE No. 4, SALT LAKE No. 5 AND SALT LAKE LODE MINE CLAIMS, SURVEY No. 4175.

01544

County of Lander,
State of Nevada,—ss.

F. D. Brown, being duly sworn, upon his oath, deposes and says that he is attorney in fact for Joseph Ralph, who makes application [710] for patent upon Sur. No. 4175; that the said Joseph Ralph has become the owner and is in the actual, quiet and undisturbed possession of not exceeding 1500 linear feet of the lodes for which application for patent is hereby made, bearing gold, copper and other precious metals; together with surface ground for the convenient working thereof; as shown by the plat and survey thereof; said mining claims, lodes and deposits and the surface ground are situated in the Battle Mountain Mining District, Lander County, State of Nevada, and are more particularly

described and set forth in the official field-notes of the survey thereof, hereto attached, and the official plat of said survey, now conspicuously posted on said claim and copy of which is herewith filed; that the right of possession of Joseph Ralph in and to said mining claims, veins, lodes and deposits, aforesaid, is substantially as follows:

That said lodes were discovered and located at various dates and were afterwards by various conveyances, conveyed to the Glasgow Western Exploration Company, Ltd., a corporation, which in turn transferred said claim to the applicant for patent herein, all of which will more fully appear by reference to the abstract of title herewith filed and made a part of this application.

That said locators and their grantors have, since the location of said claims, performed work and improvements upon said claims and each of them, to the value of more than $500.00; that the ground embraced, comprising said mining claims, is broken and rocky and is destitute of timber and has no value other than for mining purposes; that the development work done for said claims was done in such places as to best serve to economically and advantageously develop the claim; that the formation contained therein and within the said mining claims and existing at and below [711] the surface is of the same general character as is found throughout the Battle Mountain Mining District, and consists of limestone and porphyry; that the valuable ore is usually found in contact, between the limestone and the porphyry; that in developing said claims, said own-

ers have worked in well-defined veins and deposits carrying gold, copper and other precious metals; that at various times the owners hereof have uncovered and shipped ore from adjoining properties to the claims herein applied for, of marketable value, and the formation of the claims herein applied for is similar to that of said adjoining claims; that said claims are about 20 miles from the town of Battle Mountain, Nevada, and in the opinion of this affiant, with further development, said claim will produce ore of a marketable value, yielding a profit, after all expenses are paid.

In addition to which facts and in conformity with the provisions of Chapter 7, title 32, Revised Statutes of the United States, application is hereby made for and in behalf of Joseph Ralph for a patent on the John John, Blue Jacket, Yellow Jacket, Eagle, Midas, Evening Star, Copper Queen, Comet, Lucy, Reona, Salt Lake, Salt Lake No. 1, Salt Lake No. 2, Salt Lake No. 3, Salt Lake No. 4, Salt Lake No. 5 and Salt Lake lode mining claims, The net area for which patent is applied is 304,440 acres.

F. D. BROWN.

Subscribed and sworn to before me this 18th day of June, 1914, at Battle Mountain, Nevada, and I hereby certify that I consider the above deponent, F. D. Brown, a credible and reliable person and that the foregoing affidavit to which the field-notes were attached, of said survey, was read by him and examined before he subscribed his signature thereto and

before the oath was made by him.

[Seal] E. T. GEORGE,

Notary Public in and for Lander County, Nevada.

My commission expires July 3, 1917. [712]

U. S. LAND OFFICE,
ELKO, NEVADA.
Filed Jun. 22, 1914,
at 9 o'clock A. M.

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Register or Receiver.

01544

AFFIDAVIT OF CITIZENSHIP.

County of Salt Lake,
State of Utah,—ss.

Joseph Ralph, being first duly sworn on his oath, desposes and says that he is a citizen of the United States, over the age of twenty-one (21) years, to wit: Forty-five (45) years of age, that he was born in the Kingdom of Great Britain and took out his final Naturalization papers in the District Court of Silver Bow County, Montana, in the year 1895, and is now a resident of Salt Lake City, Salt Lake County, State of Utah.

JOSEPH RALPH.

Subscribed and sworn to before me L. Eggleston Cliff, Notary Public, on this 15th day of June, 1914.

[Seal] L. EGGLESTON CLIFF,
Notary Public.

My commission expires April 3, 1918. [713]

U. S. LAND OFFICE,
ELKO, NEVADA.
Filed Jun. 22, 1914,
at 9 o'clock A. M. 01544

POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS: That I, Joseph Ralph of Salt Lake City, Salt Lake County, State of Utah, a citizen of the United States, do hereby constitute and appoint F. D. Brown of Battle Mountain, County of Lander, State of Nevada, my attorney in fact for me and in my name to make application for patent of the United States in the proper land office upon the John John, BLUE JACKET, YELLOW JACKET, EAGLE, MIDAS, EVENING STAR, COPPER QUEEN, COMET, LUCY, REONA, SALT LAKE No. 1, SALT LAKE No. 2, SALT LAKE No. 3, SALT LAKE No. 4, SALT LAKE No. 5 and SALT LAKE LODE MINING CLAIMS, not exceeding 1500 feet in length by 300 feet in width, situate in Battle Mountain Mining District, Lander County, State of Nevada and to make or cause to be made any and all surveys, relocations, affidavits and all necessary papers which may be required in the prosecution of such application or to perfect or protect the title thereto and to do all acts and things in and about the premises which I myself if present could do until patent is finally delivered.

WITNESS my hand and seal this 15th day of June, A. D. 1914.

JOSEPH RALPH.

Witness: L. EGGLESTON CLIFF.

State of Utah,
County of Salt Lake,—ss.

On this 15th day of June, A. D. 1914, personally appeared before me Joseph Ralph, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

[Seal] L. EGGLESTON CLIFF,
Notary Public.

My commission expires April 3, 1918. [714]

**Testimony of Joseph Jurey, for Defendant.**

Mr. JOSEPH JUREY, called for further examination by defendant, testified as follows:

Mr. SPRINGMEYER.—(Q.) Mr. Jurey, do you know of any houses ever having been built on the Salt Lake No. 3 mining claim? A. Yes, sir.

Q. When were they built?

A. They were built in the winter of 1912 and 13.

Q. What houses or buildings were there?

A. An office, a boarding-house and three bunk-houses.

The COURT.—(Q.) What month was that?

A. They were built in the winter of 1912 and 13.

Mr. SPRINGMEYER.—(Q.) What were they reasonably worth?

Mr. FORMAN.—Object to the question for the reason it does not tend to show any development of the claims in controversy as mining claims.

The COURT.—I will sustain the objection.

Mr. SPRINGMEYER.—I will ask a few more questions on the same line. (Q.) Did any men live in those houses during the year 1912 and 1913?

Mr. FORMAN.—Object to the question unless it

(Testimony of Joseph Jurey.)

is shown their living there tended to develop the mining claims.

Mr. SPRINGMEYER.—He has already testified there were men around that claim watching the machinery owned by the company, and situated on the Salt Lake No. 3 claim, and also tools; that much has been shown in his former testimony.

(Discussion.)

The COURT.—Watching the tools and taking care of the tools used in the development of the Salt Lake, Midas and Evening Star would be proper, I think. [715]

Mr. SPRINGMEYER.—(Q.) Mr. Jurey, where were the tools that were on this claim used?

A. Where were they used?

Q. Yes. A. They were used on all the claims.

Q. Including the Salt Lake No. 3, Midas and Evening Star? A. Yes, sir.

Q. What would you say it was worth each year to watch those tools?

Mr. THATCHER.—Confining himself, I suppose, to the tools that were used on the Salt Lake No. 3.

Mr. SPRINGMEYER.—It is pretty hard, as I said before, to segregate, when they were used on all the claims.

The COURT.—That is one of the difficulties of the situation. The witness is probably better able to make the segregation, if one is possible, than anyone else in the room.

Mr. SPRINGMEYER.—(Q.) You have before testified that there were twenty claims in that group, I believe? A. Yes.

(Testimony of Joseph Jurey.)

Q. What would you say it was worth each year to watch those tools?

The COURT.—What tools do you mean?

Mr. SPRINGMEYER.—Well, the tools used in mining work on the Salt Lake No. 3, Midas and Evening Star.

WITNESS.—What was I paid for to watch them, do you mean?

The COURT.—No, what was it worth to watch them?

Mr. SPRINGMEYER.—(Q.) What was it worth to watch them each year?

A. Well, it was worth—

Q. State whether or not it was worth at least three hundred dollars?

A. Well, I guess it was, yes.

Q. Now state whether any men lived in these houses during the years 1912 and 1913?

A. Yes, sir.

Mr. FORMAN.—That question has already been objected to.

The COURT.—That has been testified to repeatedly, that men [716] were living there.

Mr. THATCHER.—Oh, well, we won't object to the question that somebody lived in them.

Mr. SPRINGMEYER.—Now, the foundation is laid, I would like to ask the question what the houses were reasonably worth.

The COURT.—I think I have ruled on that.

Mr. SPRINGMEYER.—I thought I had laid more of a foundation and your Honor might change

(Testimony of Joseph Jurey.)

the ruling. I will take an exception on the grounds it is proper, and that it shows the value of labor and improvements on those three claims for these years. That is all.

Cross-examination.

Mr. THATCHER.—(Q.) What tools were used in working on the Salt Lake No. 3 in 1913?

A. Well, there were picks and shovels.

Q. How many picks?

A. I could not say, about six or eight, I suppose.

Q. Six or eight picks in digging that one shaft, were there? A. Yes.

Q. Six picks—how many shovels?

A. About one.

Q. One shovel? What else in the way of tools was used there? A. Windlass and bucket.

Q. One windlass and one bucket—is that all?

A. That is about all, yes.

Q. Any drills? A. No.

Q. Didn't use any drills on that?

A. No, we used a pickey-poke, with a long thin sharp point.

JUROR.—(Q.) Did you use any powder?

A. Yes.

Q. Fuse? A. Yes.

Q. Any rope on that windlass with the bucket?

A. Yes, there was rope on it. [717]

Mr. THATCHER.—(Q.) What did you do with them after you got through with the work?

A. I think we left the ones in the Salt Lake No. 3.

Q. Did you leave all the tools, the picks and

(Testimony of Joseph Jurey.)

shovels? A. No, sir.

Q. Did you leave the windlass and bucket.

A. Left the windlass, the windlass tree was left there.

Q. Just left the windlass tree? A. Yes.

Q. How much is a pick worth?

A. What is that?

Q. How much is a pick worth?

A. I think they are worth a dollar.

Q. About a dollar. How much is a shovel worth?

A. About the same.

Q. About a dollar? A. Yes.

Q. How much is a windlass tree worth?

A. I don't know what they are worth.

Q. They are not worth much more than a dollar or two, are they?

A. I should say four or five dollars.

Q. Well, make it five. How much is a bucket worth?

A. I think they are worth seven and a half.

Q. How much was the rope worth?

A. Well, I can't say just how much rope was there.

Q. You don't remember—it was only a ten-foot shaft anyway?

A. It was a little deeper than that.

Q. Well, twelve or fifteen feet? A. Yes.

Q. What tools did they use on the claim during 1912? A. Well, they used drills.

Q. Do you remember how many?

A. No, I don't; there was lots of men working on there.

(Testimony of Joseph Jurey.)

Q. Lots of them? A. Yes.

Q. How long did they work?

A. They worked there several months. [718]

Q. In the early part of 1912? A. Yes.

Q. When they quit what did they do with the drills and tools? A. Took them down to the houses.

Q. Didn't they take them up to the blacksmith-shop at the Virgin shaft, and lock them up?

A. Some of them they did.

Q. Most of them?

A. No, we kept the most of them down around the houses.

Q. In the houses themselves? A. Yes.

Q. Did you have them piled up in one house, or generally scattered?

A. Piled up in the house, generally—kept them pretty well together.

Q. Who was the watchman? A. I was.

Q. Did you watch all of the property? A. Yes.

Q. Of these tools down there, how much of them would you say were used on Salt Lake No. 3—what was the value of those tools that were used on Salt Lake No. 3? A. Didn't you just ask me that?

Q. No, that was for 1913; what was the value of them that were used on there in 1912?

A. Oh, there must have been a hundred dollars' worth of tools, I should say.

Q. A hundred dollars' worth of tools? A. Yes.

Q. And the value of watching those tools was about three hundred dollars, was it? A. Yes.

Mr. THATCHER.—That is all. Now I want to

(Testimony of Joseph Jurey.)

recall the witness on some further cross-examination that I reserved.

Mr. SPRINGMEYER.—That is all right.

Mr. THATCHER.—(Q.) Did you ever see that before? (Hands paper to witness.) A. Yes, sir.

Q. What is it? A. Yellow Jacket. [719]

Q. Is that the location notice of the Yellow Jacket? A. Yes.

Q. Is that the one you posted on the ground?

A. Yes, that is the one I posted on the ground.

Q. What did you put it in?

A. Put it in a monument.

Q. And posted it upon the ground when you located the Yellow Jacket? A. Yes.

Q. Refreshing your memory, what date did you locate the Yellow Jacket? A. 11th day of March.

Q. What kind of a looking monument was the Yellow Jacket monument?

A. I can't just recall that one now, just what kind of a monument it was.

Q. Was it a stone monument?

A. It was stone, yes.

Q. And four feet high? A. Yes.

Q. Made in the usual way—it was a good big stone monument? A. Yes.

Q. Do you remember how far it was from the Virgin shaft?

Mr. THATCHER.—Before we go any further, may I offer this in evidence?

Mr. SPRINGMEYER.—I object to it on the ground it is immaterial, and not proper. I don't

(Testimony of Joseph Jurey.)

know what the idea is, unless you don't want to disclose.

Mr. THATCHER.—I don't want to disclose. The witness testified that he located this Midas claim on unclaimed, unappropriated public domain of the United States, and this has a bearing upon that.

The COURT.—Very well, if it is not connected up, it will be stricken out. Was there any ruling made with reference to this matter before?

Mr. THATCHER.—Yes; I failed to prove a discovery. It was merely marked for identification. [720]

Mr. SPRINGMEYER.—It is not in evidence until the materiality is shown, and until it is connected up properly I understand your Honor does not rule upon the offer.

The COURT.—I am simply allowing counsel to put that in with the understanding it is not to be read to the jury until he is able to connect the matter up, and then it will be stricken out if he fails to do so.

Mr. THATCHER.—(Q.) Did you make a discovery of the Yellow Jacket? A. Yes, sir.

Q. Find a vein or lode? A. Yes.

Q. What kind of a looking vein was it?

A. Well, it was a little chloride, and stuff like that.

Q. Do you know where that monument is on the ground? A. Yes, sir.

Q. Whereabouts is it?

A. You mean the location?

Q. Yes, where is the monument on the ground?

(Testimony of Joseph Jurey.)

A. It is on the northerly end of the ground.

Q. The northerly end of the ground? A. Yes.

Q. And it is in the north end of the claim, is it?

A. Very near.

Q. Let me refer you back again.

A. I know; this notice might have been changed, I don't know; this is a notice that wasn't recorded.

Q. That wasn't recorded?

A. Yes, this was, too.

Q. No, that has never been recorded; those are the file-marks of this court. You found a vein there, did you? A. Yes.

Q. Did you monument the claim? A. Yes.

Q. Did you mark your corners? A. Yes, sir.

Q. And did you do any work on the claim?

A. Yes, sir.

Q. Where did you do the work with reference to the location monument? [721]

A. It was in the northerly end of the claim.

Q. No, where with reference to the location monument?

A. Well, I have not been up there for quite a while.

Q. Never mind—do you remember it at all?

A. I could if I was there, yes.

Q. Well, was it near the location monument where you did the work? A. Yes, sir.

Q. Did the work right at the location monument—which kind of work was it?

A. It was a little cut there.

Q. A cut? A. And a little hole sunk down.

Q. You found that hole there, did you?

(Testimony of Joseph Jurey.)

A. No, sir.

Q. How big was this cut?

A. Well, it was about ten feet long, I should say, and we sunk down—the face of the cut would be ten or twelve feet at that time, when we was through with it, of course it may have caved in since.

Q. Was it an open cut?

A. An open cut, and a little winze sunk down in the end of the cut.

Q. You are sure that wasn't a shaft on the Yellow Jacket? A. No, sir, it was a cut.

Q. You found a discovery and monumented the claim, did you? A. Yes.

Q. And you posted this notice in the monument?

A. Yes, sir.

Q. I show you a certified copy of the certificate of location of the Yellow Jacket, and ask you to read it to yourself. Do you remember filing that certificate of location? (Hands to witness.) Now, refreshing your memory from that, how did you describe the location work?

A. I described it as a shaft.

Q. A shaft? A. Yes.

Q. And what were the dimensions of that shaft?

A. Four feet wide and ten feet deep and ten feet long. [722]

Q. How did you describe the claim as running from the location monument?

A. This says seven hundred and fifty feet.

Q. Seven hundred and fifty feet each way, wasn't it? A. Yes.

(Testimony of Joseph Jurey.)

Q. And you described your location monument as being right on the south end of the shaft, didn't you?

A. That one there?

Q. Yes. Well, on this one how was it; where was the location monument with reference to the shaft that you sunk on the ground? Where was the location monument, did you sink a shaft when you did that work? A. Well, it was a cut and a shaft.

Q. A shaft and a cut are altogether different, aren't they, Mr. Jurey?

A. We run a little cut in first and then sunk a shaft.

Q. How far from the discovery monument was the location work done on that claim—according to your certificate it was two feet northerly, wasn't it?

A. Yes, it says here two feet northerly.

Q. Two feet northerly? A. Yes.

Q. Do you know that big red monument that sits up on the shaft up the ravine from the tents, where the tents were? A. Where the tents were?

Q. Yes; you know where the tents were in the gulch, where the placer miners were working?

A. I don't know, I have no idea where the monument was.

Q. Do you know where that ravine is?

A. Yes.

Q. Where with reference to that ravine was the location monument of the Yellow Jacket?

A. Well, it was up in a northerly—under the Eagle dump, as far as I can remember now.

Q. The Yellow Jacket was under the Eagle dump?

(Testimony of Joseph Jurey.)

A. Yes, the Eagle is east of the Midas. [722½]

Q. Do you remember what kind of a monument it was? A. No, I don't.

Q. Except it was rock? A. It was rock, yes.

Q. And it was two feet south of the discovery hole?

A. I didn't say that now.

Q. Well, you so state in your location certificate; that is the way you described it, is it not?

A. Yes, I would not be sure now.

Mr. THATCHER.—That is all.

Mr. SPRINGMEYER.—Do you withdraw the offer?

Mr. THATCHER.—No. They are already in evidence; they have not been read to the jury, so they can't do any harm.

Mr. SPRINGMEYER.—I move that they now be stricken out, and that the evidence be stricken from the record, for the reason it has not been connected up, is not proper cross-examination, and is immaterial.

Mr. THATCHER.—I am going to follow it up, if the Court please.

The COURT.—I will let it rest with other matters that are undetermined, for a while longer, but it must ultimately go out unless it is connected.

Redirect Examination.

Mr. SPRINGMEYER.—(Q.) There was a great deal of claim jumping in this canyon in the year 1913, was there not? A. Yes.

Q. And location notices were moved everywhere—all over the claims.

(Testimony of Joseph Jurey.)

A. Yes, sir, and monuments all over the claims; it is hard for any person to go there and pick out any kind of a monument, hardly.

Q. That was the case with many claims that you know of? A. Yes.

Q. That you know of personally?

A. No, I never paid much attention. [723]

Q. You know they were moved? A. Yes.

Q. Know that location notices were moved and know that monuments were moved, do you not?

A. I suppose they were.

Q. They were in different places? A. Yes.

Mr. SPRINGMEYER.—That is all.

Mr. THATCHER.—(Q.) Were any monuments moved on Salt Lake No. 3 in 1913? A. No, sir.

Q. Were any monuments moved on the Midas in 1913? A. No, sir.

Q. Were any monuments moved on the Evening Star? A. No, sir.

Q. Were any moved on any of the claims in controversy in this action?

A. I didn't mean about monuments being moved on the corners, or anything like that; there was monuments built all over the hills since this jumping has been going on.

Q. Oh, you mean that somebody built monuments all over the hills?

A. Yes, built all over the hills.

Mr. SPRINGMEYER.—(Q.) And they took monuments built in other places, and moved parts of them away to do that building, didn't they?

(Testimony of Joseph Jurey.)

Mr. THATCHER.—If you know.

A. No, I could not answer that.

The COURT.—(Q.) Did you locate your discovery shaft on the Yellow Jacket with reference to the Eagle dump? A. Yes, sir.

Q. Which direction was it from the dump—I want to be clear about that? A. It was west.

Q. How far west?

A. Well, I should say two or three hundred feet.

Q. Two or three hundred feet west from the Eagle dump? A. Yes.

Q. How near would it be to the present east side line of the [724] Midas?

A. Well, it would be about the same, I should say.

Q. How far was the Eagle dump from the east side line of the Midas?

A. Well, it would be between four and five hundred feet.

Mr. THATCHER.—(Q.) Mr. Jurey, don't you know, as a matter of fact, that the point where you now say was the discovery shaft on the Midas, was the point where your original location notice of the Yellow Jacket was posted?

A. No, I didn't say that, did I?

Q. I ask you now? A. No, it is not.

Q. Isn't it the fact?

A. No, it is not the place.

Q. Didn't you so testify on the last trial of this case? A. I don't remember.

Q. You don't remember? A. No.

Q. That big red shaft up there on the southern end

(Testimony of Joseph Jurey.)

of it? A. The red shaft?

Q. Yes, sir, the big red shaft, it is the only one there that looks that way; wasn't that the discovery work of the Yellow Jacket?

A. No, sir, that was the discovery work of the Midas.

Q. That was the discovery work of the Midas?

A. Yes.

Q. You are sure about that?

A. Yes, sir, I am sure about that.

Mr. THATCHER.—I may want to recall this witness to read his testimony to him, if the Court please, I have not the memoranda now, but it will take only a minute when I do.

Mr. SPRINGMEYER.—That is all. You may recall him. [725]

**Testimony of John Jory, for Defendant.**

Mr. JOHN JORY, called for further examination by defendant, testified as follows:

Mr. SPRINGMEYER.—(Q.) Mr. Jory, do you know J. H. Clive? A. Yes, sir.

Q. How long have you known him?

A. The first time I met Mr. Clive was in 1896.

Q. Did you know him in 1907?

A. Yes; and also eight and nine.

Q. In what places did you meet him?

A. At Copper Canyon.

Q. And have you seen him since that time?

A. Yes, sir, I seen him about five years ago.

(Testimony of John Jory.)

Q. Did you see him between '99 and five years ago?

A. I don't know as I did.

Q. Do you know whether he was a citizen of the United States?

A. Well, to the best of my memory he told me he was born in Salt Lake City.

Mr. THATCHER.—I move to strike it out on the ground it is hearsay.

Mr. SPRINGMEYER.—I submit the answer to the question is responsive.

The COURT.—It is responsive, but the objection is that it is hearsay, and not the best evidence.

Mr. SPRINGMEYER.—Before your Honor rules on that, it occurs to me that is a collateral matter, and the best evidence is not necessary on that.

The COURT.—That point has been raised before.

Mr. THATCHER.—We can take that up again, and if the Court changes his mind with reference to the ruling, I can withdraw my objection and let the answer stand. [726]

**Testimony of Francis D. Brown, for Defendant (Recalled).**

Mr. FRANCIS D. BROWN, called for further examination by defendant, testified as follows:

Mr. SPRINGMEYER.—(Q.) You stated you were a resident of Salt Lake City?

A. Yes, sir.

Q. Were you born there? A. Yes, sir.

Q. Do you know J. H. Clive? A. Yes, sir.

Q. How long have you known him?

A. Well, ever since I can remember.

(Testimony of Francis D. Brown.)

Q. How old are you? A. Thirty-seven.

Q. Did you know him between the years 1890 and 1900?

A. Well, some time between those years, I have known him; I have known his family better, though.

Q. Did he live in Salt Lake City during those years? A. Yes, sir.

Q. Was your family on intimate terms with the family of Mr. Clive? A. Yes, sir.

Q. Did you know his children and members of his family? A. Yes, sir, went to school with them

Q. Do you know whether he ever voted?

A. I never have seen him vote, I suppose he did, though.

Mr. THATCHER.—I move to strike out the "suppose."

The COURT.—That may go out.

Mr. SPRINGMEYER.—(Q.) Do you know whether he was ever a candidate for public office in Salt Lake City or not?

A. I think at one time he held some office in the school board, but I don't know what it was.

Mr. SPRINGMEYER.—Cross-examine.

Mr. THATCHER.—No questions. I would like to call Mr. Ralph for a question or two on cross-examination. [727]

**Testimony of Joseph Ralph, for Defendant (Recalled —Cross-examination).**

Mr. JOSEPH RALPH, the defendant, recalled for further cross-examination, testified as follows:

Mr. THATCHER.—(Q.) Mr. Ralph, you were the

(Testimony of Joseph Ralph.)

attorney in fact for the liquidator of the Glasgow and Western, Limited, of London, were you not?

A. Yes.

Q. Was that an English corporation?

A. British.

Q. British corporation; and the appointment of the liquidator of the Glasgow and Western was for the purpose of winding it up, was it? A. Yes, sir.

Q. Acting for that purpose; he was a citizen of Great Britain, too? A. Yes.

Mr. SPRINGMEYER.—Object to that on the ground "he was," you say.

Mr. THATCHER.—Yes, who was?

A. Mr. Lamont.

Q. Whom do you represent in this proceeding now? A. Myself.

Q. Has the Glasgow and Western any interest in this proceeding? A. None whatever.

Q. Have they any interest in the property?

A. Not in these claims.

Q. Not in these three claims. A. No, sir.

Q. Have they any interest in any in the application for patent? A. No, sir.

Q. In none of the sixteen claims?

A. In none of the sixteen claims.

Q. You are not prosecuting this for the liquidator of the Glasgow and Western, or for the Glasgow and Western? A. No, sir.

Q. But in your own right? A. Yes.

Mr. THATCHER.—That is all. [728]

Mr. SPRINGMEYER.—(Q.) Do you know of

(Testimony of Joseph Ralph.)

your own knowledge of what country the Glasgow and Western is a corporation?

A. It is a Scotch corporation.

Q. You don't know of your own knowledge, do you, Mr. Ralph?

A. I don't know of my own knowledge—supposed to be Scotch.

Mr. SPRINGMEYER.—Then I move his testimony as to the citizenship of the Glasgow and Western be stricken out on the ground it appears it is hearsay, and the record is the best evidence.

Mr. THATCHER.—Oh, I don't care.

The COURT.—I think you already have it in the record that the Glasgow and Western admits its citizenship.

Mr. SPRINGMEYER.—I don't think in this record—I don't think it is material. Mr. Thatcher is willing it goes out.

Mr. THATCHER.—I am willing it should go out, and I suppose you are willing it should stay in.

Mr. SPRINGMEYER.—That is all, Mr. Ralph. We offer in evidence a certified copy of a notice of a writ of attachment in the case of Verdi Lumber Company against Murray Scott, filed May 9, 1914, serving notice of attachment on part of the property in controversy in this action.

Mr. THATCHER.—Object to it on the ground it is incompetent, irrelevant and immaterial.

The COURT.—Do you propose to follow it up by showing that the property has been attached and sold?

(Testimony of Joseph Ralph.)

Mr. ELLIS.—That is already in evidence by the deed they offer; it simply follows that up—it shows the time.

The COURT.—It will be admitted.

(The Notice of Attachment is marked Defendant's Exhibit No. 37, and reads as follows:) [729]

**Defendant's Exhibit No. 37—Notice of Attachment.**

Copy.

*In the Justice's Court of Union Township, County of Humboldt, State of Nevada.*

DEMAND: $215.00 and Costs of Action.

VERDI LUMBER COMPANY, a Corporation,
Plaintiff,

vs.

MURRY SCOTT,
Defendant.

NOTICE OF ATTACHMENT.

By virtue of a Writ of Attachment issued out of the Justice's Court of Union Township, County of Humboldt, State of Nevada, I have, this 2d day of May, A. D. 1914, attached the Home Stake Placer Mining Claim in Copper Canyon, County of Lander, State of Nevada, said mining claim was located by J. Healey and Murray Scott on the 8th day of September, A. D. 1913, said mining claim is situated in a northeasterly direction from the placer mines of H. C. Christensen and James Dahl and southwesterly from the Glasgow and Western Mill, Copper Canyon,

1085

County of Lander, State of Nevada.

G. B. FRANCIS,
Sheriff of Lander County.
By J. A. HASH,
Deputh Sheriff.

Filed May 9th, 1914, at 3:45 P. M. at request of Bar Francis.

BERT ACREE,
County Recorder.

State of Nevada,
County of Lander,—ss.

I, Bert Acree, County Recorder in and for the said County of Lander, do hereby certify that the foregoing is a full, true and correct copy of the "COPY" of the Notice of Attachment of Verdi Lumber Co. vs. Murray Scott, as the same is filed in my office as said Recorder.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal this 25th day of May, A. D. 1915.

[Seal] BERT ACREE,
County Recorder in and for the County of Lander, State of Nevada.

[Endorsed]: Certified copy of Notice of Attachment Verdi Lumber Co. vs. Murray Scott. [730]

Mr. SPRINGMEYER.—I offer in evidence an agreement and option from Guy Davis to Joe Kernan, dated the 28th day of November, 1913, recorded in the office of the county recorder of Lander County on January 26th, 1914; in form both a deed and an option, I take it, although it is called an agreement.

Mr. THATCHER.—Object to it on the ground it is

incompetent, irrelevant and immaterial.

The COURT.—Do you contend that has divested him of all his title in the property?

Mr. SPRINGMEYER.—No, but there was a thousand dollars paid upon it, and it may be he has a right to specific performance under the agreement; in that case it would affect the title in a material way.

The COURT.—I will sustain the objection at the present time.

Mr. SPRINGMEYER.—We except on the ground it is competent.

The COURT.—Unless you propose to follow it up by further proof.

Mr. SPRINGMEYER.—No, we have no further offer to make. We offer in evidence a document from Guy Davis to Samuel Tinguely dated the 22d day of December, 1914, purporting to assign and transfer an interest in and to a certain option executed by the party of the first part to Joseph Kinman for seven thousand dollars. That affects only the title since the institution of this suit.

Mr. THATCHER.—It does not seem to me that is competent, relevant or material. Suppose Davis did borrow $7,500 and assigned the payments that he expects to get in the dim and distant future on the option to sell the property, I cannot see how there can be any misjoinder or nonjoinder in any way, shape, manner or form; and I submit it is incompetent, irrelevant and immaterial. [731]

The COURT.—The objection will be sustained.

Mr. SPRINGMEYER.—We take an exception to the ruling of the Court. We offer in evidence an

agreement between D. S. Van Orman and Noah Faubert, parties of the first part, and W. M. Doyle, C. A. Harrington, F. W. Dixon and O. H. Sonne, parties of the second part.

Mr. THATCHER.—It is merely an agreement to convey under certain circumstances. I make the objection it is incompetent, irrelevant and immaterial.

Objection sustained. Defendant excepts.

Mr. SPRINGMEYER.—We offer in evidence an agreement between John J. Healey and Murray Scott on the one side, and S. O. Ray, A. H. Crampton, Robert Phillips and C. C. Mathews on the other.

Mr. THATCHER.—No objectio

(The deed is admitted in evidence, marked Defendant's Exhibit No. 38, and reads as follows:)

**Defendant's Exhibit No. 38—Agreement Between Healey, Scott, Ray, Crampton, Phillips and Mathews.**

"JOHN J. HEALEY and MURRAY SCOTT

to

S. O. RAY, A. H. CRAMPTON, ROBERT PHILLIPS and C. C. MATHEWS.

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, being the owners of a certain placer mining claim known as the 'Homestake' and located in Copper Canyon, Battle Mountain MiningDistrict, Lander County, Nevada, do this day sell, assign, transfer and set over to S. O. Ray, A. H. Crampton, Robert Phillips and C. C. Mathews all gold, silver and other minerals in a portion of said

Homestake Placer Mining Claim, for a period of two years, for the consideration of Two Hundred ($200) Dollars in cash this day paid, the receipt of which is hereby acknowledged, and a further consideration of Three Hundred ($300) Dollars, to be paid on or before the 3d day of February, 1914. [732]

The portion of the Homesteak Placer Mining Claim herein referred to extending Two Hundred (200) feet North from the South end line of said claim and extending the full width of said claim to its side lines.

It is hereby agreed that the said parties heretofore mentioned can enter said mining ground on any part thereof at any time they deem proper and extract said minerals in any manner they may deem proper and fit, the same as if the said ground was owned by themselves, for a period of two years from the date of this instrument.

It is hereby agreed by and between the parties hereto that the conditions of this agreement will extend to and bind the heirs and assigns of all parties hereto.

IN WITNESS WHEREOF, we have hereunto set our hands this 3d day of November, 1913.

JOHN J. HEALEY.
MURRAY SCOTT.

Battle Mountain, Nevada, July 13, 1914.

THIS IS TO CERTIFY that for and in consideration of the sum of Ten ($10.00) Dollars to us in hand paid, receipt of which is hereby acknowledged, we the undersigned do hereby sell, assign, release and remise all of our right, title and interest in and to

this within lease on the Homestake Placer Mining Claim to R. L. Phillips and A. H. Crampton.

S. O. RAY. (Seal)
C. C. MATHEWS. (Seal)

Witness: CHAS. LaKAMP.

State of Nevada,
County of Humboldt,—ss.

On this 3d day of November, 1913, personally appeared before me C. D. Mackay a Notary Public in and for said County of Humboldt, John J. Healey, known to me to be the person described in and who executed the foregoing instrument, [733] who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.

[Seal] C. D. MACKAY,
Notary Public.

State of Nevada,
County of Lander,—ss.

On this 17th day of November, 1913, personally appeared before me, E. T. George, a Notary Public in and for said County of Lander, Murray Scott, known to me to be the person described in and who executed the foregoing instrument, who duly acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.

[Seal] E. T. GEORGE.

Notary Public in and for Lander Co., Nev.

My commission expires July 3d, 1917.

Filed for record November, 28th, 1914 at 4:10 P. M. and recorded at the request of H. R. Lemaire.

File No. 4363.

BERT ACREE,
County Recorder.

State of Nevada,
County of Lander,—ss.

I, Bert Acree, County Recorder in and for the said County of Lander, do hereby certify that the foregoing is a full, true and correct copy of a lease and assignment of same from John J. Healey and Murray Scott to S. O. Ray, A. H. Crampton, Robert Phillips, and C. C. Mathews, and assigned by said S. O. Ray and C. C. Mathews to R. L. Phillips and A. H. Crampton, as the same appears of record at page 26 of Book 5 of [734] Miscellaneous, records of Lander County, State of Nevada, in my office as said Recorder.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal this 26th day of May, A. D. 1915.

[Seal] BERT ACREE,
County Recorder in and for the County of Lander, State of Nevada.

[Endorsed]: Certified copy of Lease Healey and Scott to Ray, Crampton et als."

Mr. SPRINGMEYER.—We offer in evidence a lease from Noah Faubert and Guy Davis, to George King and John Travis, dated October, 30, 1913.

Mr. THATCHER.—That is on some surface ground, isn't it?

Mr. SPRINGMEYER.—Yes.

Mr. THATCHER.—Object to it on the ground it is incompetent, irrelevant and immaterial, in no wise affecting a non or misjoinder of parties in the action, and in no wise affecting any of the issues in the action.

Objection sustained. Defendant excepts.

Mr. SPRINGMEYER.—We offer in evidence a certified copy of tax-roll of the office, boarding-house and stable on the Salt Lake No. 3 claim for some years, and also the mill building and leaching plant for other years, the period being from 1904 to 1914, for the purpose of showing good faith in his abandonment and exercise of such rights of dominion as will entitle the defendant to judgment by adverse possession.

Mr. THATCHER.—We object to it on the ground it is incompetent, irrelevant and immaterial.

Objection sustained. Defendant excepts.

(The Court admonishes the jury and at 4:30 P. M. an adjournment is taken until to-morrow, June 2d, 1915, at 9 o'clock A. M.) [735]

Tuesday, June 2d, 1915.

Court convened 9 A. M.

(All parties present.)

Mr. SPRINGMEYER.—We offer in evidence a certified copy of the miners' records and miners'

meetings of the Battle Mountain Mining District, covering the entire period of the existence of that District, so far as appears from the record.

Mr. THATCHER.—We object on the ground it is incompetent, irrelevant and immaterial; it does not show, or tend to show, any rules or regulations contrary to, in violation of, or in conflict in the slightest degree with any of the statutes of the United States or of the State of Nevada, nor prescribe any other or greater requirements for the location of a claim than the statutes.

Mr. SPRINGMEYER.—As I understand the law, the districts may form certain rules and regulations which do not conflict with the Federal or State statutes; now I want to show that there are no rules and regulations even of that kind, by this verified statement.

The COURT.—It seems to me if there is any claim of that kind the burden is on the other side to show it; I don't think there is any issue of that kind that would require the introduction of that record.

Mr. SPRINGMEYER.—It was just out of an abundance of caution. We will ask that it be marked for identification, and take an exception to the ruling of the Court.

Mr. SPRINGMEYER.—We offer in evidence a deed from James Johnston and J. H. Clive to The Glasgow & Western Exploration Company, of certain claims, including the Salt Lake No. 3. [736]

Mr. THATCHER.—I will admit the conveyance of those claims from the beginning of the transaction down to Mr. Ralph, if you will just put them in.

Mr. SPRINGMEYER.—If you will just allow me to offer them without objection; I think they ought to be in evidence.

(The deed offered in evidence is marked Defendant's Exhibit No. 39, and reads as follows:)

**Defendant's Exhibit No. 39—Deed from Johnston & Clive to Glasgow & Western Exp. Co.**

"JAMES JOHNSTON and J. H. CLIVE

to

THE GLASGOW & WESTERN EXPLORATION COMPANY, LIMITED.

THIS INDENTURE, made this ninth day of April, A. D. one thousand eight hundred and ninety-eight, Between, James Johnston and J. H. Clive of Salt Lake City, Salt Lake County, State of Utah, parties of the first part and the Glasgow & Western Exploration Company, Limited, a corporation, party of the second part, WITNESSETH:

The first parties for and in consideration of the sum of Sixty Thousand ($60,000) Dollars, lawful money to them in hand paid, the receipt whereof is hereby acknowledged have granted, bargained, sold, conveyed, assigned, transferred and delivered and by these presents do grant, bargain, sell, convey, assign, transfer and deliver in fee unto the said party of the second part and to its successors and assigns forever, the following described premises, mining property and personal property, situated in Battle Mountain Mining District, Lander County, Nevada, to wit:

All of the Virgin Lode Mining Claim, U. S. Lot

No. 37, also all of the Maria Louise (otherwise known as the Mary Louise) lode Mining Claim U. S. lot No. 38, also, all of the Mountain Rook lode Mining Claim U. S. lot No. 39 all patented by the United States, also all of the John John lode mining claim; also all of the Lucy lode mining claim; also all of the Reena lode mining [737] claim; also all of the East Lake Superior lode mining claim; also all of the Lake Superior No. 1 lode mining claim; also all of the Salt Lake Lode mining claim; also all of the Salt Lake No. 1 lode mining claim; also all of the Salt Lake No. 2 lode mining claim; also all of the Salt Lake No. 3 lode mining claim; also all of the Salt Lake No. 4 lode mining claim; also all of the Ethel C. lode mining claim; also all of the Washington lode mining claim; said twelve lode mining claims last named are unpatented. For a more particular description of said patented claims reference is hereby made to the United States patent thereof, and for a more particular description of said twelve unpatented lode mining claims reference is hereby made to the location notices thereof respectively as the same appear of record in the office of the Register of Deeds of said Lander County, also one 90 horse power horizontal engine complete, including the building formerly covering the same (there being no boiler with said engine) and also the pumps and pipe on the ground and also all timbers on the ground, and the blacksmith-shop and all tools belonging thereto; also one horse whim, also all tracks, tracking and track materials; also all cars, ore bins, tanks, rigs, ore houses and ore dumps and all the buildings in-

cluding the offices, boarding-house, stables, assay office and cabins, used in connection with said mining claims, and all the buildings formerly owned by the old and new Battle Mountain Mining Companies, also all water and the entire spring located in Copper Canyon, and all water flowing therefrom and the pipe line extending therefrom to the mines above named and the perpetual right to divert, take and use for all mining uses and purposes whatsoever, all said waters, also one 30 horse-power engine and boiler, and the mill now on the ground, at or near Willow Creek in said County about three [738] miles from said mines, said mill and mill buildings having been taken down, also all timbers and lumber at and near said mill on Willow Creek, and also all other tenements, hereditaments, appurtenances and all personal property whatsoever on or heretofore and now used in connection with all said property.

TOGETHER with all the lodes and mineral veins in said mining claims and the dips, spurs and angles thereof, and all the rights, privileges, ways, easements and franchises, thereto incident, appendant and appurtenant or therewith usually had and enjoyed and the rents, issues and profits thereof.

TO HAVE AND TO HOLD all and singular the premises with the appurtenances and privileges thereto incident, unto the said party of the second part, its successors and assigns forever, and the parties of the first part, for themselves and their heirs and personal representatives covenant and

agree to and with the party of the second part, its successors and assigns, that they said parties of the first part own the fee, simple and unincumbered title to and are in the lawful possession of said Virgin, Maria Louise and Mountain Rook lode Mining Claims, patented, and they said parties of the first part, own and are in the lawful possession of said twelve additional lode mining claims, unpatented, and are in the lawful possession thereof by and under due location thereof, and by the performance of all required labor thereupon and that their said title thereto is free and clear of all encumbrances, and that they said parties of the first part, own the full, free and unincumbered title to and are lawfully in and entitled to the possession of all the other property hereinbefore particularly described; that they have not done or suffered anything whereby or means whereof any of their aforesaid titles to any of said properties are or may become at any time [739] hereafter impeached, clouded or incumbered and that the full, free and unincumbered title thereto as aforesaid in and to the party of the second part, its successors and assigns forever. They the said parties of the first part do warrant and will forever defend as against themselves their heirs, personal representatives and assigns, and all persons whomsoever lawfully claiming or to claim the same.

WITNESS our hands and seals the day and year

herein first above written.

JAMES JOHNSTON. (Seal)
J. H. CLIVE. (Seal)

Signed, sealed and delivered in the presence of
W. M. BRADLEY and
WM. PISCHEL.

State of Utah,
Salt Lake County,—ss.

On this 9th day of April, A. D. 1898, personally appeared before me, a Notary Public in and for the said County, James Johnston and J. H. Clive, known to me to be the persons described in and who executed the foregoing instrument, who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Salt Lake County, Utah, the day and year in this Certificate first written.

[Seal] W. M. BRADLEY,
Notary Public, Salt Lake County, Utah.

($60.00 revenue stamps affixed and cancelled.)

Recorded at the request of Bennett H. H. B. & R. November 7th, 1899, at 45 minutes past 11 o'clock A. M.

G. M. DYER,
County Recorder. [740]

State of Nevada,
County of Lander,—ss.

I, Bert Acree, County Recorder in and for the said County of Lander, do hereby certify that the fore-

going is a full, true and correct copy of Deed from James Johnston and J. H. Clive to The Glasgow & Western Exploration Company, Limited, as the same appears of record at page 360 of Book 49 of Deeds, records of Lander County, State of Nevada, in my office as said Recorder.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal this 26th day of May, A. D. 1915.

[Seal] BERT ACREE,
County Recorder in and for the County of Lander, State of Nevada.

[Endorsed]: Certified Copy of Deed James Johnston and J. H. Clive to Glasgow & Western Exploration Co., Ltd."

Mr. SPRINGMEYER.—We offer a deed from Joseph Jurey and William T. Jurey to Joseph Farren, conveying the Midas and the Evening Star.

(The deed is admitted in evidence, marked Defendant's Exhibit No. 40, and reads as follows:)

**Defendant's Exhibit No. 40—Deed from Jurey & Jurey to Joseph Farren.**

"JOSEPH JUREY and WILLIAM T. JUREY
to
JOSEPH FARREN.

This Deed, Made this 11th day of July in the year of our Lord one thousand nine hundred and seven, Between Joseph Jurey and William T. Jurey, of Galena, Lander County, State of Nevada, parties of the first part, and Joseph Farren of Salt Lake City,

State of Utah, the party of the second part, WITNESSETH:

That the said parties of the first part for and in consideration of the sum of three thousand Dollars, lawful money, to them [741] paid by the party of the second part, the receipt whereof is hereby acknowledged, by these presents does grant, bargain, sell, remise, release and forever quit-claim unto the said party of the second part his heirs and assigns, forever all of their certain rights to lands, mining claims and property containing gold, silver, lead, copper and other precious metals, situated in Battle Mountain Mining District, Lander County, State of Nevada.

The "Blue Jacket" claim, "The Eagle" claim, "The Yellow Jacket" claim "The Midas" claim and the "Evening Star" claim, all of the above claims are each fifteen hundred (1500) feet in length by six hundred (600) feet in width and extend southerly from the south end lines of the "East Lake Superior," The "Salt Lake" No. 2 and the "Salt Lake" No. 3 and are located on the eastern side of Copper Canyon.

Together with all metals, ores, gold and silver bearing quartz, rock and earth therein, and all dips and spurs, rights, privileges and franchises, tenements, hereditaments and appurtenances thereto incident or belonging, or therewith used and enjoyed and all the estate, right, title, interest, property, claim and demand whatsoever, legal and equitable, as well in possession as in expectancy, of the parties

of the first part, of, in or to said premises and every part thereof.

TO HAVE AND TO HOLD the same unto the party of the second part his heirs and assigns forever.

And the said first parties hereby relinquish all their rights of survivorship, dower and substitute for dower and grants and releases all interests and estates whatsoever, whether vested or *enchoat,* and forever bar the same.

IN WITNESS WHEREOF, the said parties of the first part had hereunto set their hands and seals the day and year first above [742] written.

JOSEPH JUREY. (Seal)
WM. T. JUREY. (Seal)

State of Nevada,
County of Lander,—ss.

On the 11th day of July, A. D. 1907, personally appeared before me Joseph Jurey, William T. Jurey, the signers of the above instrument, who duly acknowledged to me that they executed the same.

[Seal] FRANK A. LIMBAUGH,
Notary Public.

My commission expires Jany. 16th, 1910.

Filed July 15th, 1907, at 10 A. M. Recorded at request of Joseph Farren July 31st, 1907, at 11 A. M.

File No. 2402.

H. W. DYER,
County Recorder.
E. W. Hunt,
Deputy.

State of Nevada,
County of Lander,—ss.

I, Bert Acree, County Recorder in and for the said County of Lander, do hereby certify that the foregoing is a full, true and correct copy of Deed from Joseph Jurey and William T. Jurey to Joseph Farren as the same appears of record at page 149 of Book 51 of Deeds, records of Lander County, State of Nevada, in my office as said Recorder.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal this 26th day of May, A. D. 1915.

[Seal] BERT ACREE,
County Recorder in and for the County of Lander, State of Nevada.

[Endorsed]: Certified Copy of Deed Joseph Jurey, Wm. T. Jurey, to Joseph Farren." [743]

Mr. SPRINGMEYER.—We offer a deed from Joseph Farrent to the Glasgow & Western Exploration Company to the Salt Lake No. 3, Midas and Evening Star.

(The deed is admitted in evidence, marked Defendant's Exhibit No. 41, and reads as follows:)

**Defendant's Exhibit No. 41—Deed from Joseph Farren to Glasgow & Western Exploration Company.**

"JOSEPH FARREN
to
GLASGOW & WESTERN EXPLORATION COMPANY.

THIS INDENTURE, made this 15th day of February, A. D. 1909, by and between Joseph Farren, of Salt Lake City, Utah, party of the first part, and the Glasgow & Western Exploration Company, a corporation, organized under the Companies Acts of Great Britain, party of the second part, WITNESSETH:

That for and in consideration of the sum of Two Thousand Dollars, lawful money of the United States, to the party of the first part in hand paid by the party of the second part, the receipt of which is hereby acknowledged, said party of the first part does hereby grant, bargain, sell and convey, unto the party of the second part, its successors and assigns, forever, all the following described mining claims, situated in Battle Mountain Mining District, Lander County, State of Nevada, to wit:

The Blue Jacket Lode Mining claim, the Eagle lode mining claim, the Yellow Jacket lode mining claim, the Midas lode mining claim, the Evening Star lode mining claim; all said claims extending southerly from the south end lines of the East Lake Superior, Salt Lake No. 2 and Salt Lake No. 3 lode mining claims, and located on the east side of Copper Canyon in said Mining District.

For a more particular description of said mining claims, reference is hereby made to the record of the location notices thereof respectively in the office of the County Recorder of said County.

TOGETHER with all and singular the veins, lodes and mineral [744] deposits therein with the dips, spurs, angles and variations thereof and the rights, ways, easements, privileges and franchises thereto

incident, appendant and appurtenant or therewith usually had and enjoyed and the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the above granted and described premises unto the party of the second part, its successors and assigns forever.

IN WITNESS WHEREOF, the party of the first part hereunto set his hand and seal the day and year first above written.

JOSEPH FARREN.

Signed, sealed and delivered in the presence of
R. B. HOODNESS and
WM. PISCHEL.

State of Utah,
Salt Lake County,—ss.

On this 15th day of February, A. D. 1909, personally appeared before me, Wm. Pischell, a Notary Public in and for said County, Joseph Farren, whose name is subscribed to the foregoing instrument as party thereto, personally known to me to be the individual described in and who executed the said foregoing instrument as party thereto, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year first above written.

[Seal] WM. PISCHELL,
Notary Public.

My commission expires Feby. 11/1912.
Filed 6/6/10 at 5:10 P. M.

Recorded at request Glasgow-Western Exploration Company 6/28/10 at 9:25 A. M.
File No. 1162.

BERT ACREE,
County Recorder.
By F. W. Whitburn,
Deputy. [745]

State of Nevada,
County of Lander,—ss.

I, Bert Acree, County Recorder in and for the said County of Lander, do hereby certify that the foregoing is a full, true and correct copy of Deed from Joseph Farren to Glasgow & Western Exploration Company as the same appears of record at page 478 of Book 52 of Deeds, records of Lander County, State of Nevada, in my office as said Recorder.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal this 26th day of May, A. D. 1915.

[Seal] BERT ACREE,
County Recorder in and for the County of Lander, State of Nevada.

[Endorsed]: Certified Copy of Deed. Joseph Farren to Glasgow & Western Exploration Co. Ltd.

Mr. SPRINGMEYER.—We offer in evidence a certified copy of the minutes of the meeting of the creditors of the Glasgow & Western Exploration Company, showing the power of the Liquidator to convey.

(The Minutes are admitted in evidence, marked Defendant's Exhibit No. 42, and read as follows:)

**Defendant's Exhibit No. 42—Minutes of Meeting of Creditors of Glasgow & Western Exploration Company.**

Filing No. 21617.

Minutes of Meeting of the Creditors of the Glasgow & Western Exploration Company in Liquidation, held in the Liquidators Office, 33 Renfield Street, Glasgow, on Tuesday, the fifteenth day of April, 1913, at 3 o'clock P. M.

Present: Mr. Peter Coats, a Creditor claiming for 467,944:14:3, Mr. G. M. Reid, a Creditor claiming for £2,601:9:0, and Mr. E. S. Coats, a Creditor claiming for £100. [746]

Attending: Mr. William Lamont, C. A., Liquidator, and Mr. David Murray, L. L. D., Solicitor, Mr. Peter Coats in the Chair. The Liquidator laid on the table copies of the "Edinburgh Gazette," dated 4th April, 1913, the "Glasgow Herand" Newspaper, dated 5th April 1913, and the "Evening Citizens" Newspaper, dated 4th April 1913, containing notice of the meeting.

The Secretary laid on the table a Balance Sheet as at 31st October 1912, showing that the liabilities amounted to £854,590:16:0 and the assets, leaving out the loans to the Adelaide Star Mines Ltd. now considered worthless, to £88,853. Even in the event of these other assets realizing the book figures and without taking expenses of realization into account, this state of affairs only showed 2/1d in the £, but the Liquidator expressed the opinion that they would not realize more than half that amount, or say 1/–

a pound. The creditors having considered the position of the company and the resolutions of the shareholders at their meeting upon the 31st March 1913, that the Company cannot by reason of its liabilities continue its business, that the company be wound up voluntarily, and that Mr. William Lamont, C. A. be appointed Liquidator.

P. COATS.

RESOLVED: That it is *necessary* that an application be made to the Court for the appointment of any person as Liquidator in the place of or jointly with the Liquidator appointed by the company.

P. COATS,
Chairman.

I, Anthony Stoddard Murray, of One Hundred and Sixty Nine West George Street in the City of Glasgow, Scotland, Notary Public by Royal Authority duly admitted allowed and sworn do hereby certify and Make Known to all to whom these presents shall come and may concern that the foregoing is a true Minute of Meeting of the Creditors of the Glasgow and Western Exploration Company Limited [747] in Liquidation: and I further Certify that the Signature "P. Coats" appended to said Minute is the genuine Signature of Peter Coats, Chairman of the same Meeting.

In faith and testimony whereof I have hereunto set my hand and affixed my seal notarial this fifth day of May in the year of our Lord One Thousand Nine Hundred and Thirteen.

[Seal] ANTHONY S. MURRAY,
Notary Public.

Filed for record at 1:55 o'clock P. M. Apr. 10, 1914.

AGNES EDWARDS,
County Recorder.

OFFICE OF THE COUNTY RECORDER.

State of Utah,
County of Beaver,—ss.

I, the duly elected, qualified and acting County Recorder in and for Beaver County, State of Utah, do hereby certify the within two sheets to contain a full, true and correct copy of the Minutes of the Glasgow & Western Exploration Company in Liquidation, held in the Liquidators Office, 33 Renfield Street, Glasgow, on Tuesday the fifteenth day of April, 1913, at 3 o'clock P. M.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Official Seal this the twentieth day of April A. D. 1914 at my said office in Beaver City, Beaver County, State of Utah.

[Seal] AGNES EDWARDS,
County Recorder in and for Beaver County, Utah.

Filed Apr. 24th, 1914, at 4:10 P. M. Recorded at the request of C. A. Gellette.

BERT ACREE,
County Recorder.

File No. 3832. [748]

State of Nevada,
County of Lander,—ss.

I, Bert Acree, County Recorder in and for the said County of Lander, do hereby certify that the foregoing is a full, true and correct copy of the Minutes of Meeting and appointment of Liquidator

of the Glasgow & Western Exploration Co., Ltd., in Liquidation, as the same appears of record at page 10 of Block 5 of Miscellaneous records of Lander County, State of Nevada, in my office as said Recorder.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal this 26th day of May A. D. 1915.

[Seal] BERT ACREE,
County Recorder in and for the County of Lander, State of Nevada.

[Endorsed]: Certified Copy of Appointment of Liquidator."

Mr. SPRINGMEYER.—I offer in evidence a deed from William Lamont, Liquidator for the Glasgow & Western Exploration Company, to Joseph Ralph,—a deed of the three claims, Salt Lake No. 3, Midas and Evening Star. These deeds all contain reference to other claims also.

(The deed is admitted in evidence, marked Defendant's Exhibit No. 43, and reads as follows:)

**Defendant's Exhibit No. 43—Quitclaim Deed from William Lamont to Joseph Ralph.**

QUITCLAIM DEED.

"WILLIAM LAMONT, LIQUIDATOR FOR GLASGOW & WESTERN EXPLORATION CO., LTD.

to

JOSEPH RALPH.

William Lamont, as Liquidator of the Glasgow & Western Exploration Company, Ltd., a corporation

of Great Britain, grantor, does hereby grant, bargain, sell, convey and confirm unto Joseph Ralph, Grantee of Salt Lake City, Salt [749] Lake County, State of Utah, for and in consideration of the sum of One Dollar, the following described mining claims, situate and being in the Battle Mountain Mining District, Lander County, State of Nevada, viz.:

John John, Copper Queen, Salt Lake, Salt Lake No. 1, Salt Lake No. 2, Salt Lake No. 3, Salt Lake No. 4, Salt Lake No. 5, Reona, Comet, Lucy, Midas, Evening Star, Yellow Jacket, Eagle and Blue Jacket lode mining claims.

WITNESS the hand of said grantor this twenty-fourth day of March A. D. one thousand nine hundred and fourteen.

Seal of Glasgow & Western Exploration Co., Ltd.

WM. LAMONT,

Liquidator of the Glasgow & Western Exploration Company, Ltd.

Signed in the presence of David Murray, 1069 West George Street, Glasgow, Scotland, Notary Public.

Glasgow, Scotland.

On the 24th day of March A. D. one thousand nine hundred and fourteen personally appeared before me William Lamont, the signer of the above instrument, who duly asknowledged to me that he executed the same.

[Seal]

DAVID MURRAY,
Notary Public.

Consulate of the United States,
Glasgow, Scotland,—ss.

I hereby certify that David Murray whose genuine signature appears at the foot of the foregoing certificate, dated the Twenty-fourth day of March, 1914 is a Notary Public in and for Scotland, duly commissioned and qualified; and that at the time of signing he was duly authorized, and that all his official acts as such Notary Public are entitled to, and ought to have, full faith and credit in law. [750]

WITNESS my hand and the seal of said Consulate, at Glasgow, this Twenty-fourth day of March 1914.

[Seal] J. N. McCUNN,
Consul of the United States.

$2.00 Fee Stamp. United States Consulate, Glasgow, Scotland.

Filed April 10th, 1914, at 4:30 P. M. Recorded at the request of Gustin, Gillette & Brayton.

File No. 3824.

BERT ACREE,
County Recorder.

State of Nevada,
County of Lander,—ss.

I, Bert Acree, County Recorder in and for the said County of Lander, do hereby certify that the foregoing is a full, true and correct copy of Deed from William Lamont, Liquidator for Glasgow & Western Exploration Company, Ltd., to Joseph Ralph, as the same appears of record at page 327

(Testimony of Joseph Ralph.)

of Book 53 of Deeds, records of Lander County, State of Nevada, in my office as said Recorder.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal this 26th day of May A. D. 1915.

[Seal] BERT ACREE,
County Recorder in and for the County of Lander, State of Nevada.

[Endorsed]: Certified Copy of Deed. William Lamont, Liquidator to Joseph Ralph."

Mr. SPRINGMEYER.—I would like to recall Mr. Ralph for just a few questions. [751]

Mr. JOSEPH RALPH, the defendant, called for further examination, testified as follows:

Mr. SPRINGMEYER.—(Q.) Mr. Ralph, when you left the United States in 1903, what were your intentions as to citizenship?

Mr. THATCHER.—Objected to as immaterial.

The COURT.—I will allow that question.

Mr. SPRINGMEYER.—Answer the question, please.

A. I had no idea of remaining permanently in England.

Q. As to citizenship, what was your intention?

A. To retain my American citizenship, of course.

Q. In the United States? A. Yes.

Q. When you arrived in England, and during the time you were in England, what were your intentions?

A. It was never my intention to settle down permanently in England.

(Testimony of Joseph Ralph.)

Q. And as to citizenship, what were your intentions?

A. My intentions were to retain my American citizenship, and which I always did.

Q. Was it your intention during all that time to return to this country? A. Yes, sir.

Q. You stated that you were a mining engineer, and in that connection you travelled around, and your whereabouts were always not positively known to you in advance.

A. Yes, sir; I left my trunk in this country when I went to England in '03—I went to England with two suitcases.

Q. You had effects in this country?

A. I left the whole of my belongings at the Ledge Mine in Colorado, when the Bank of Silverton failed in the spring of 1903; and when I left the Ledge Mine I went from there to Denver, and then to Kansas City, and then to Chicago, my intention being to go [752] back to the mine.

Q. Mr. Ralph, you testified that you knew the condition of the road leading to the Salt Lake No. 3 in the vicinity of the veins about which you testified, and of the excavation at the mill in the vicinity of the vein you testified existed there in 1912 when you first saw the property? A. Yes.

Q. Now please state whether at each of those points there was excavated sufficient material to amount to at least ten feet by six feet by four feet?

A. I would say more than ten times that amount.

Mr. SPRINGMEYER.—That is all.

Mr. THATCHER.—That is all.

Mr. SPRINGMEYER.—May it please the Court, we have an affidavit which we expect on this morning's train, otherwise we have finished, if we may reserve that right.

Mr. THATCHER.—If it be admissible at all, you can put it in at any time, the time when you offer it will not make any difference.

Mr. SPRINGMEYER.—Very well. We rest. [753]

**Testimony of John J. Healey, for Plaintiffs (Recalled in Rebuttal).**

Mr. JOHN J. HEALEY, called in rebuttal, testified as follows:

Mr. THATCHER.—(Q.) I show you a notice, being marked Plaintiff's Exhibit "G"; did you ever see that before? A. Yes, sir.

Q. Where did you see it?

A. In that monument about two feet south of what is known as the Midas discovery.

Q. What has been called on this trial the Midas discovery? A. Yes.

Q. What is that?

A. That is the location notice of the Yellow Jacket.

Mr. SPRINGMEYER.—Will you please designate that point?

Mr. THATCHER.—(Q.) Can you designate it on the map, Mr. Healey?

A. Yes, sir. (Indicates point on map.)

Q. What is the number of it?

A. Twenty-one. (On Plaintiffs' Exhibit "A.")

(Testimony of John J. Healey.)

The COURT.—That is where you found it?

A. Yes.

Mr. THATCHER.—(Q.) What kind of a hole is that right two feet north of it? A. It is a shaft.

Q. What are the dimensions of it?

A. The exact dimensions is five feet wide, eleven feet long and eight feet deep.

Q. Is it in hard rock? A. Yes.

Q. What is the color of it? A. It is red.

Q. What is the color of the monument—did you find a monument there?

A. Yes, sir; it is the same material as came out of the hole.

Q. Same material that came out of the hole?

A. Yes, sir.

Q. You have been pretty well over this hill around the Midas, Evening Star, and through this southern end of the district? [754]

A. Yes, sir; I have been all over the hill.

Q. Is there any place on that hill where there is a cut similar to that in size and dimensions?

A. No, sir; there ain't another cut on the hill of that size.

Q. As a matter of fact, that shaft is very distinctive, is it not?

A. Yes, sir; right on the ridge.

Q. Did you ever have any conversation with Mr. Joseph Jurey with reference to that notice?

A. Yes, sir.

Mr. SPRINGMEYER.—We object to that on the ground it is immaterial, not proper rebuttal, and no

(Testimony of John J. Healey.)

foundation has been laid.

Mr. THATCHER.—(Q.) Not with reference to that notice; did you ever have any conversation with Joseph Jurey with reference to this monument now at the point called the Midas discovery?

A. Yes, sir.

Mr. SPRINGMEYER.—Object to that on the same ground.

Mr. THATCHER.—He has simply answered yes. (Q.) Now when and where, and who was present, and what was the conversation.

Mr. SPRINGMEYER.—Same objection.

The COURT.—You may ask when and where.

Mr. THATCHER.—(Q.) When was it?

A. It was the following day from the discovery of this notice.

Q. Do you remember what day you found that notice?

A. It was on or about the 17th day of November.

Q. What year? A. 1913.

Q. Who was present?

A. Why, I believe there was Murray and Scott and Noah Faubert.

Q. Anybody else? A. Not that I know of.

Q. Was Mr. Phillips present?

A. Mr. Phillips was not present at the conversation.

Q. He was not present at the conversation?

A. No.

Q. He was present when you found the monument?

A. Yes. [755]

(Testimony of John J. Healey.)

Q. Who was present when you found the monument?

A. Mr. Pickett, Mr. Lamb, Mr. Phillips, Charles Grew—I believe that was all.

Mr. THATCHER.—If the Court please, having identified this, I ask for its admission in evidence, for general purposes.

Mr. SPRINGMEYER.—We object on the ground that no proper foundation for its admission has been laid, that it is incompetent, irrelevant and immaterial, and not probative of any of the issues in this case.

Mr. THATCHER.—(Q.) When you say Midas discovery, do you mean discovery work?

A. I mean what is termed the discovery hole of the Midas.

Mr. SPRINGMEYER.—And that is point 21 on Plaintiff's Exhibit "A"?

A. Point 21 on Plaintiff's Exhibit "A."

Mr. SPRINGMEYER.—I may add to that objection the further ground, at this time the plaintiffs are precluded from introducing any evidence to show that the ground was unoccupied, unappropriated public land at the time of those locations; but it was only proper for them to offer that evidence in their casce in chief.

Mr. ELLIS.—Also for the further reason that the evidence offered is not within the issues of this case.

The COURT.—I will admit it, and allow you an exception.

Mr. SPRINGMEYER.—On the grounds stated in

the objection, may it please the Court.

(The Notice of Location, marked Plaintiff's Exhibit "G" for identification, is admitted in evidence, marked Plaintiff's Exhibit "G," and reads as follows:) [756]

**Plaintiffs' Exhibit "G"—Location Notice of Yellow Jacket Lode.**

"NOTICE OF LOCATION.

NOTICE IS HEREBY GIVEN, That the undersigned, having complied with the requirements of Section 2324 of the Revised Statutes of the United States, and the local laws, customs and regulations of this district, have located fifteen hundred feet in length by 600 feet in width, on this, the Yellow Jacket lode, vein or deposit, bearing gold, silver, copper, lead or other valuable minerals, situated in the Bat. Mtn. Mining District, Lander County, Nevada, the location being described and marked on the ground as follows, to wit:

Commencing at this Location (Discovery) Monument and running thence 750 feet to North end center monument; thence west 300 feet to northwest corner monument No. 1, thence south 750 feet to southwest center side line, thence south 750 feet to southwest corner monument No. 2, thence east 300 feet to south end center monument; thence east 300 feet to southeast corner monument No. 3 thence north 750 feet to northeast center side line, thence north 750 feet to northeast corner monument No. 4, thence west 300 feet to north end center monument; to place of beginning, including, also, all dips, spurs, angles or variations.

(Testimony of John J. Healey.)

This claim is situated in Copper Canyon about ¼ of mile from the Virgin Mine this claim also parallels the Eagle on the West and also joins the Salt Lake No. 2 on the South.

The above-described mining claim shall be known as the YELLOW JACKET. Located this 11th day of March, 1907.

Names of Locators:
WILLIAM T. JUREY,
JOSEPH JUREY." [757]

Mr. THATCHER.—(Q.) What was the condition of this monument when you first saw it?

A. Well, it was a monument about, I should judge, two feet or two feet and a half in diameter, and about three and a half feet high, or four—it was an old monument; I looked into the monument and discovered the amended certificates of the Midas and Evening Star—

Q. Don't go on to that. What was the condition of the monument?

A. The condition of the monument; the rocks was all filled with sagebrush, and debris that was carried there by the rats.

Mr. THATCHER.—Now I am going to offer in evidence for all purposes likewise, the certificates of location of the Yellow Jacket.

Mr. SPRINGMEYER.—We object on the same grounds stated in the objection to the notice of location.

The COURT.—Do you make any objection as to the contents of that document; that is, as to whether

(Testimony of John J. Healey.)

in its statement of facts, it complies with the statute?

Mr. SPRINGMEYER.—I assumed that it did, may it please the Court.

Mr. THATCHER.—Go ahead and read it, and I will go to something else.

Q. Mr. Healey, were you over the Salt Lake No. 3?

A. Yes, sir I have been over every foot of it.

Q. Were you over it in 1913?

A. I was, several times.

Q. Were you over it during the months of September, October, November and December of that year?

A. Yes, sir, and previous.

Q. Have you heard the testimony with reference to shaft number one? [758]

A. I have, yes, sir.

Q. Have you been up to shaft number one?

A. Yes, sir.

Q. When was shaft number one sunk?

A. Shaft number one was sunk the latter part of December.

Q. After September, and after these placer locations were made? A. Yes, sir.

Q. Do you know the excavation and trenching that has been done slightly along the road there, stripping along that bank? A. Yes, sir.

Q. Do you know when that was done?

A. Do you mean the road being built?

Q. No, the stripping along the upper bank of the road, when it was stripped off there, along where the shaft is, a short distance north and south of it.

A. That has been done since the last trial; that was

(Testimony of John J. Healey.)

done along in December.

Q. Along in December? A. Yes.

Q. Was the stripping which has been done, and the ground there exposed, exposed in September, 1913?

A. No, sir.

Q. Was it exposed at any time until after the last trial of this case? A. No, sir.

Q. I call your attention to cut number 2, do you know where that cut is now on the ground?

A. I do, yes, sir.

Q. Have you seen it lately? A. I have, yes, sir.

Q. Do you know when that work was done?

A. That work was begun on or about the 20th day of December, 1913.

Q. Some time about the 20th of December, 1913?

A. Yes, sir.

Q. Were you over that ground before that time, any time? [759]

A. Yes, sir. I hunted that ground all over.

Q. Did you say you hunted the ground all over?

A. I did, yes, sir.

Q. At that time, and prior to December, 1913, was there any cut or depression, or open cut, there or in that vicinity?

A. No, sir, there was no depression or no open cut any place along that hill, outside of the wagon road.

Q. Outside of the wagon road to the mill?

A. Yes.

Q. Were you hunting for a cut up around there?

A. I was.

Q. Why?

(Testimony of John J. Healey.)

A. Because there had been an injunction granted against us at that time, and I went up there to look over the ground, and I had been on the ground previous to that time, so I went over the ground and made a thorough inspection, looking to see if there was anything in the shape of a monument, depression or open cut on that end of the property.

Q. Is there a trail coming from the road to the mill? A. Yes, sir, below that cut.

Q. Below the cut? A. Yes, sir.

Q. And does it go up near that cut, is it an old trail?

A. It is an old trail, maybe about three years old, I should judge, just used during the time of the mill, never been used very extensively; it is just a small affair on the hillside.

Mr. SPRINGMEYER.—You say that was near cut 2? A. Below cut 2.

Mr. THATCHER.—(Q.) I hand you a picture, what is that a picture of?

A. That there is the point at which the discovery monument should stand, according to the original location of the Salt Lake No. 3.

Q. Is there a peg there? A. Yes, sir.

Q. By whom was that peg driven?

A. That peg was driven by myself. [760]

Q. With whom? A. O. P. Adams.

Q. Who else? A. Roy Pickett.

Q. Who is Mr. Pickett?

A. Mr. Pickett is a United States Deputy Mineral Surveyor.

Q. Was he surveying the claim? A. Yes.

(Testimony of John J. Healey.)

Q. Was that the point he indicated as the location point of the Salt Lake No. 3? A. Yes.

Mr. THATCHER.—We offer that in evidence.

(Photograph admitted and marked Plaintiffs' Exhibit "A-11.")

Q. Do you know two little shafts back of the office and bunk houses on that hill? A. Yes.

Q. Have you seen them? A. Yes, sir.

Q. What is the character of the formation in those?

A. Wash.

Q. So far down as you can see are they wash?

A. Yes.

Q. Is there any hard rock exposed in any point in them? A. No, sir.

Q. What is the general slope of the hill or ground from the location monument back towards these two little shafts?

A. Well, as far as you could see, there is an undetermined depth of wash; further west than the shaft there is a graveyard.

Q. Further west than that there is a graveyard?

A. Yes.

Q. Are there any graves there? A. Yes.

Q. Are they monumented?

A. No monuments that I could see.

Q. Calling your attention again to cut number 2, did you see a monument when you were up there at that place?

A. I seen a monument when I was last there.

Q. When did you first see that monument there?

A. The first time I see that monument there was

(Testimony of John J. Healey.)

about three or four days after they had begun work. [761]

Q. Three or four days after they begun work on that cut?

A. Yes, sir, I seen the monument placed there.

Q. Who placed it there?

A. A man by the name of Smith.

Q. Did you see him pack it up the hill?

A. Yes, sir, I did.

Q. Who was Smith?

A. Smith was a foreman and watchman for Mr. Ralph on this property of the Glasgow and Western.

Q. Now, Mr. Healey, you were one of the locators of the Homestake placer? A. Yes, sir.

Q. And you have been on that ground a good part of the time since the location, have you.

A. I have, yes, sir.

Q. Have you been over the line, the theoretical line from point 20 to point 24, being the red cut on the Evening Star, to the big white cut on the southern end of the Evening Star?

A. I have, yes, sir.

Q. What is the condition of the formation throughout and along that line, as a miner?

A. Well, it is all wash and sagebrush—an undetermined depth of wash.

The COURT.—What is the number of that?

Mr. THATCHER.—Cuts 20 to 24.

Q. What did you say it was?

A. An undetermined depth of wash.

Q. Were there any outcroppings along there any

(Testimony of John J. Healey.)

place? A. No, sir.

Q. Was there any change in the color of the wash visible to the eye along there, from the ordinary wash on either side of that? A. Not a particle.

Q. Have you actually been along that line with a surveyor? A. I have.

Q. Were you along that line with Mr. Moran the other day? [762] A. I was.

Q. Did you look at it at that time?

A. I have; I have prospected it.

Q. I call your attention to this yellow streak running down here, did you hear Mr. Tibby's testimony with reference to a cut south of the Evening Star?

A. I have, yes, sir.

Q. How many cuts are there there south of the Evening Star? A. Three.

Q. Well, were there any more cuts than that any place southerly of the Evening Star?

A. There is a cut east and south.

Q. How far east of south?

A. I should judge it *would* 150 or 200 feet east of south.

Q. East would be this way from it, would it? (Indicates.) A. Yes, sir.

Q. I call your attention to a picture, is that a picture of those cuts? A. Yes, sir.

Q. Does it show that one that is to the east?

A. No, sir this shows the one to the south.

Q. That shows the three cuts to the south?

A. Yes.

Q. Were you over to those cuts?

(Testimony of John J. Healey.)

A. Yes, several times.

Q. What is exposed in them? A. Wash.

Q. Any hard rock exposed in any of those cuts?

A. No, sir, neither one of them.

Mr. THATCHER.—We offer that in evidence, if the Court please.

Mr. SPRINGMEYER.—I wish you would show on the map approximately where this was taken.

Mr. THATCHER.—I will put another witness on to show where it was taken, exactly.

WITNESS.—I can give you an idea of it. It was right about there (indicating on map).

Q. It is almost due south of the discovery cut 24?

A. Yes. [763]

Mr. SPRINGMEYER.—It is south of this cut?

A. South of this cut here, right down in the gulch, right at the foot of the gulch.

Q. It is not on the cut on the adjoining claim, however, is it?

A. It is on Dahl and Christensen's claim, yes; Mr. Lemaire may be interested in it; it is in a group of placer claims in there.

Mr. THATCHER.—That is all. You may cross-examine.

(Photograph admitted in evidence and marked Plaintiffs' Exhibit "A-12.")

Mr. SPRINGMEYER.—You wanted to offer this certificate of location of the Yellow Jacket?

Mr. THATCHER.—Yes.

Mr. SPRINGMEYER.—We object to it on the ground it does not conform to the statute, and there

is no reference made to any fixed or natural monument, so as to sufficiently designate the claim, and that it does not contain a sufficient description of the so-called location to identify it, or to identify the ground; and on the grounds of the objection heretofore made.

(Certificate of Location Yellow Jacket heretofore marked Plaintiffs' Exhibit "H" for identification, is admitted in evidence, marked Plaintiffs' Exhibit "H," and reads as follows:)

**Plaintiffs' Exhibit "H" — Location Certificate of Yellow Jacket Lode.**

"CERTIFICATE OF LOCATION YELLOW JACKET.

THIS IS TO CERTIFY, That a mining claim named the Yellow Jacket was located by Wm. T. Jurey and Joseph Jurey on the 10th day of March, 1907, situated in Battle Mountain Mining District, Lander County, Nevada, and situated in Copper Canyon and about 3 miles from the town of Galena in southerly direction and about 1½ mile in southerly direction from the old Copper Canyon Mine and joins Salt Lake No. 2 on the South. We claim 1500 linear feet along the course of the mineral bearing ledge, lode, or vein, [764] extending 750 feet from the location monument in a southerly direction, and 750 feet in a northerly direction, together with 300 feet on each side of the center of the ledge for the entire length of the claim. The discovery work consists of sinking and running cut situated about 2 feet in a northerly direction from the location monument and

its dimensions are: Six feet wide 10 feet long and 10 feet deep, exposing ledge, lode or vein in place.

The northwest corner is marked by a monument and post 4 feet high, inscribed N. W. corner Yellow Jacket mine;

The southwest corner is marked by a monument and post 4 feet high, inscribed S. W. corner Yellow Jacket mine;

The southeast corner is marked by a monument 4 feet high, inscribed S. E. corner Yellow Jacket mine.

There is also a.....at the center of each side line.

The discovery work has been done and the location completed since Mar. 10th, 1907. Dated this 4th day of Apr. 1907.

WILLIAM T. JUREY,
JOSEPH JUREY.

Recorded at the request of Joseph Jurey, April 27th, A. D. 1907, at 30 min. past 6 o'clock P. M. at page 127 of Book H, Battle Mountain Mining District, Lander County, Nevada.

H. R. LEMAIRE,
District Recorder.

Filed for record at the request of H. R. Lemaire, April 29, A. D. 1907, at 2:30 P. M., and recorded at page 214 of Book 4 of Duplicate Mining Notices, records of Lander County, Nevada.

H. W. DYER,
County Recorder.
By E. W. Hunt,
Deputy.

File No. 2042. [765]

(Testimony of John J. Healey.)

Cross-examination.

Mr. SPRINGMEYER.—(Q.) You say you found this Yellow Jacket notice at the point you have described? A. Yes.

Q. You don't know who put it there, do you?

A. Yes.

Q. You do, of your own knowledge? A. Yes.

Q. Who did? A. Mr. Jurey.

Q. Were you there when he did it?

A. Mr. Jurey told me—

Q. (Intg.) Answer the questions and don't try to inject something to help your case, it is not proper. You say you know that notice was put there?

A. I don't know personally it was put there, but Mr. Jurey told me.

Q. Then you want to change your answer in that there? A. No, sir.

Q. It is possible somebody carried it there from the Yellow Jacket claim, is it not?

A. I don't know.

Q. You don't know about that?

A. I don't know whether anybody carried it there from the Yellow Jacket claim—there ain't no such hole on the Yellow Jacket claim.

Q. Are you sure you didn't carry it there yourself? A. No, sir, I never seen that notice.

Q. Are you as sure of that as you are of the fact who put it there? A. As to who put it there?

Q. You are just as sure of that fact as you are of who put it at the point you found it?

A. I am not sure who put it there.

(Testimony of John J. Healey.)

Q. You say that the stripping of the veins on the road was done since September, 1913?

A. Yes, sir.

Q. You don't mean to say that the road didn't uncover those [766] veins at the time the road was built, do you?

A. There was no work done on those veins.

Q. You don't mean to say that the lodes were not exposed, do you? A. The which?

Q. The veins were not exposed at that time?

A. I never seen no veins there.

Q. You saw some fractures, I suppose?

A. Fractures and slips in the rock.

Q. The fractures and slips were exposed when the road was built, were they not? A. Yes, sir.

Q. Now, you said that you could not find any solid rock much of anywhere over those claims, didn't you?

A. I didn't say I couldn't find any solid rock over the claims.

Q. Over the center line of the Salt Lake No. 3, you could not find any? A. I did, yes, sir.

Q. You could not find any solid rock at the point on the Midas claim marked by a yellow line on Mr. Tibby's map, could you? A. On the Midas claim?

Q. Yes.

A. I don't see no yellow streak on Mr. Tibby's map on the Midas claim.

Mr. THATCHER.—Not on the Midas, on the Evening Star.

Mr. SPRINGMEYER.—(Q.) You said you could not find any solid rock here on the Evening

(Testimony of John J. Healey.)

A. No, sir, not between those two points. Star?

Q. As a matter of fact, you couldn't see anything but wash all over those claims? A. That is all.

Q. All wash, every place?

A. I can't look under the wash.

Q. You identified a photograph, and it was admitted in evidence. A. Yes, I did.

Q. Taken south, you said, of this claim on what you said was Dahl and Christensen's claim?

A. Yes. [767]

Q. Now, isn't it a fact that photograph was taken just about here on this picture? A. No, sir.

Q. It was not? A. No, sir.

Q. Do you know where this shaft is? A. I do.

Mr. THATCHER.—Is that a shaft?

Mr. SPRINGMEYER.—Or this adit rather, pardon me.

A. Adit.

Q. Can you mark on this photograph, Defendant's Exhibit No. 21, just about where your photograph was taken?

A. No, sir, I can't, it don't show on that photograph.

Q. Would you say that the point at which this tunnel is sunk there is solid rock there?

A. I can't describe that tunnel, I don't know where that tunnel is.

Q. Don't you know—

A. (Intg.) Yes, I do, that is the tunnel; here is a shaft above.

(Testimony of John J. Healey.)

Q. That is the tunnel, is it not, directly south of this line, this yellow line on the Evening Star?

A. No, sir, it is not.

Q. It is not? A. No, sir.

Q. Where is it?

A. Well, I could point it to you on the map.

Q. I wish you would as well as you can.

A. That tunnel lay a little bit west and south of this corner stake (indicating on map).

Q. That is the corner stake between the Midas lode and the Evening Star lode? A. Yes, sir.

Q. You say it lies a little south of that?

Mr. THATCHER.—South and west.

Mr. SPRINGMEYER.—Yes; but not south of the point marked 69 on Plaintiffs' Exhibit "A"?

WITNESS.—No, sir.

Q. It is not south of that? A. No, sir. [768]

Redirect Examination.

Mr. THATCHER.—(Q.) In November or December, 1913, did you take any samples off these claims? A. I did.

Q. Did you have them assayed? A. I did.

Q. Where did you take samples from—have you any memoranda? A. I have.

Mr. SPRINGMEYER.—I object to that on the ground it is not proper rebuttal testimony.

Mr. THATCHER.—(Q.) Where, with reference to the sampling of anyone else, did you take these samples?

A. I followed Mr. Ralph up; and when Mr. Ralph picked into the rock and was taking some samples, I

(Testimony of John J. Healey.)

would follow him up two or three hundred feet behind, and take a sample there, too.

Mr. SPRINGMEYER.—I object to that on the same grounds as before. Does this go to the same line?

Mr. THATCHER.—Yes, to the same line.

Mr. SPRINGMEYER.—I will just have the objection go to the point, and one ruling of the Court can be made.

Mr. THATCHER.—(Q.) Where did you take the samples?

A. Took sample number 2 and number 1 on the road to the mill.

Q. Where did you take sample number 3?

A. Sample number 3 I called it an open cut on the Midas.

Q. Open cut on the Midas? A. Yes.

Q. Where is that on the map?

A. That was the shaft.

Q. That is the point now marked as discovery point of the Midas? A. Yes.

Q. Where did you take number 4?

A. In the Yellow Jacket tunnel—supposed to be.

Q. What do you call the Yellow Jacket tunnel?

A. A long tunnel running in towards what is so called now the [769] Yellow Jacket lode.

Q. Point 22? A. Twenty-two, yes.

Q. Where did you take sample number 5?

A. Sample number 5 was taken from the Evening Star on the north end, on the center of the claim, what they call the discovery now.

(Testimony of John J. Healey.)

Q. Is that point 20? A. Yes.

Q. Where did you take sample number 6?

A. Sample number 6 was taken out of the original discovery cut of the Evening Star.

Q. Is that the one that is at the south end of the claim? A. Yes.

Q. Down here, marked point 24? A. Yes, sir.

Mr. THATCHER.—We offer them in evidence.

Mr. SPRINGMEYER.—We object on the ground that it is improper rebuttal evidence; it was part of their case in chief to show there was no mineral upon this ground—that it was unoccupied and unappropriated; now they are attempting to introduce evidence here to show that there was no mineral.

Mr. THATCHER.—Mr. Ralph testified that he found certain veins there at that time, and took samples from them; and Mr. Healey has testified that he was right on the trail of Mr. Ralph when he was over there taking samples, and I think it is proper rebuttal.

Mr. SPRINGMEYER.—We object on the further ground that there is no evidence here by Mr. Ralph that he took any samples on that occasion, or had any assayed. Clearly, we have offered no assays of Mr. Ralph—we have offered no samples taken by him.

Q. Let me ask you, when did you do that sampling, what date?

A. Well, it was some time along, I think the 20th or 21st, between the 20th and the 25th day of November. [770]

(Testimony of John J. Healey.)

Q. 1913?

A. 1913; it was just prior to the time we was closed down by a temporary injunction, and Mr. Ralph came out—Mr. Ralph, Mr. Gillette and Mr. Smith.

Mr. SPRINGMEYER.—It is clearly not rebuttal testimony then, because there is no evidence of Mr. Ralph in that regard, that he sampled or took any assays at that time, and there are none here in evidence. There is not even any showing that Mr. Ralph was on the property on that occasion, so far as it has been elicited on direct or cross-examination of Mr. Ralph, or on direct or cross-examination of any other person.

(Discussion.)

The COURT.—If he had introduced samples, and these samples had come from the same place, I should be very much inclined to admit them, but it seems to me that was part of your case in chief.

Mr. THATCHER.—If the Court please, he did say that he took samples, and that they were valuable, but that he didn't put the assays in because they never had them assayed; but he did testify they were valuable—testified that directly yesterday.

Mr. SPRINGMEYER.—I do not recall that he said that.

Mr. THATCHER.—We will read the record at noon.

Recross-examination.

Mr. SPRINGMEYER.—(Q.) Do you know how far south of the Evening Star that photograph was taken, about how many feet?

(Testimony of John J. Healey.)

A. I never took that photograph.

Q. About how many feet was it taken?

A. I never took that photograph.

Q. Do you know about how far south of the Even-Star it was? A. How far?

Q. Yes.

A. It was, I should judge—I don't think it is over [771] two hundred feet from that cut across there; I never measured it, but it is very close; just a little ways down the hill, up on the other side.

Mr. THATCHER.—I will show that by another witness.

Mr. SPRINGMEYER.—(Q.) You don't know then how far it was away from the photograph taken by Mr. Ralph?

A. It ain't a very great ways.

Q. It is not a very great ways? A. No.

Mr. SPRINGMEYER.—That is all.

**Testimony of Robert L. Phillips, for Plaintiffs (in Rebuttal).**

Mr. ROBERT L. PHILLIPS, called in rebuttal, testified as follows:

Mr. THATCHER.—(Q.) Mr. Phillips, do you know this yellow line—you have heard the testimony with reference to this yellow streak that runs down through the Evening Star, heard Mr. Tibby's testimony with reference to it.

A. Yes, sir.

Q. Have you been south of the end line of the Evening Star? A. I have.

Q. Did you see any workings or cuts there?

(Testimony of Robert L. Phillips.)

A. I did.

Q. Have you been along this line? (Indicating on map.) A. I have.

Q. How long did you live on this ground?

A. Something over six months.

Q. You lived right on the Homestake Placer for six months? A. Yes.

Q. How long have you lived in the district?

A. Since October, 1913.

Q. Have you been over that ground, along this supposed yellow streak here? A. I have. [772]

Q. What is the character of the soil—is there any rock in place? A. No rock in place.

Q. Exposed, I mean.

A. Exposed, I would not say.

Q. Is it wash along there? A. Yes.

Q. Was there any streak along in there between these two points which shows a difference from the surrounding debris and soil and overflow?

A. No, sir.

Q. I call your attention to a picture; do you know what that represents? (Hands to witness Plaintiffs' Exhibit "A-12.")

A. That represents three cuts south of the Evening Star.

Q. Were you present when that picture was taken?

A. I was.

Q. About how far from those cuts was that taken?

A. The distance you mean?

Q. Yes, from the point where the camera was to where those cuts were.

(Testimony of Robert L. Phillips.)

A. I should judge practically twenty-five or thirty feet, maybe more.

Q. What is the character of the soil exposed in those cuts?

A. It is in gravel—wash; just the common wash off the hillside.

Q. Is there any vein or anything of the kind exposed? A. No.

Q. Do you know another cut on that hill southerly from the end line of the Evening Star?

A. Yes, sir, there is a tunnel in there.

Q. Where is that?

A. That would be about two hundred feet from that yellow line, to the east.

Q. Two hundred feet east?

A. Yes, and south, something like that; be in there somewhere (indicates on map.)

Q. Be in here somewhere? A. Yes.

Q. Put a mark there about approximately where you would locate it—that is about a sixty-foot to the inch scale.

(Witness indicates point on map, Defendant's Exhibit No. 5, with [773] and X in red.)

Q. It is about two hundred feet east of these cuts?

A. Yes, something like that.

Q. Did you go up to this corner, the southeast corner of the Evening Star? A. I did.

Q. On the last trip you were over there going over the ground? A. Yes.

Q. I show you another photograph, Mr. Phillips, and ask you what that photograph is?

(Testimony of Robert L. Phillips.)

A. That is a photograph of the white cut on the southern end of the Evening Star.

Q. And did you go on the southern end of the Evening Star? A. Yes.

Q. Designated "69" on Mr. Tibby's map and "24" on Exhibit "A"? A. Yes.

Q. Was that taken from the dumps as shown in Plaintiffs' Exhibit "A-12"?

A. Yes, taken back up the hill.

Mr. THATCHER.—We offer this photograph in evidence.

Mr. SPRINGMEYER.—No objection.

(Photograph admitted in evidence, and marked Plaintiffs' Exhibit "A-13.")

Mr. THATCHER.—(Q.) From this point down in here toward those cuts was there anything in the nature of a vein disclosed?

A. No, sir.

Q. That you could see?

A. No, sir, it is all wash.

Q. Was there any difference in the color of the wash? A. No, sir.

Q. At any place observable to the eye?

A. No, sir.

Q. Mr. Phillips, do you know where the point "Shaft 1" is? A. Yes, sir. [774]

Q. Do you know where that stripping is along the road there? A. I do.

Q. Do you know whether or not that was done before September, 1913, or afterwards?

A. It was done afterwards.

(Testimony of Robert L. Phillips.)

Q. Do you know point 2? A. Yes.

Q. Do you know that cut there? A. I do.

Q. When was that work done on that cut?

A. That work was done in the latter part of December, and in January, 1913-14.

Q. 1913-14; did you see any cut in there before they did that work there? A. I did not.

Q. Did you examine and look for one?

A. Yes, sir.

Q. How did you come to do that?

A. Just before the other trial here Mr. John Jory stopped at our tent, and we were talking about the claims, and he said that they—

Mr. SPRINGMEYER.—I object to what he said to you on the ground it is immaterial. Simply state what the fact is—what was done.

Mr. THATCHER.—(Q.) Well, were you informed of anything?

A. He informed me that the location monument—

The COURT.—That need not go in.

Mr. THATCHER.—Never mind. That is all.

Cross-examination.

Mr. SPRINGMEYER.—(Q.) Mr. Phillips, the road was built in 1912, wasn't it?

A. It was said to be, yes.

Q. You don't know, do you?

A. I don't know when it was built, no.

Q. You were not there then? A. No.

Q. You don't know then whether there were any fracture zones or veins exposed in the road at point 1 on Plaintiffs' Exhibit "A," in 1912, when the road

(Testimony of Robert L. Phillips.)

was built, do you? [775]

A. It wasn't there in 1913.

Q. You don't know whether it was there in 1912, when the road was built, do you?

A. It certainly would have been there in 1913 if it was there in 1912.

Q. You think the road could have gone through there and not have shown the fractures or veins across the road; that is what you mean to tell the jury; if that went across the road on both sides, the road could have gone through there in 1912, and not have shown those fractures and veins?

A. I am talking about that fracture that the shaft is on.

Q. You are talking about that one fracture. Now, Mr. Phillips, this point on Defendant's Exhibit No. 5, marked by you, is right on the side of a gulch, isn't it?

A. Yes, it is on the side of a gulch.

Q. There is a gulch runs right along down here, is there not? A. Yes.

Q. Approximately this way, along the lines indicated by the contour lines?

A. The gulch don't run with the line of the claim.

Q. It does not run with the line of the claim?

A. Not up there.

Q. But your point on the photograph was taken where the gulch is, right on the side of the gulch?

A. Yes.

Q. A very convenient place where the wash showed, isn't it? Can you say whether on Defend-

(Testimony of Robert L. Phillips.)

ant's Exhibit No. 21, the adit or tunnel indicated is in solid rock? That was testified on behalf of defendant to be on Lemaire's ground, adjoining the Evening Star, and being a continuation, in Mr. Tibby's opinion, of the vein exposed at point marked 69 on Defendant's Exhibit No. 5. Do you know whether that tunnel or adit is in solid rock; you are familiar with it, of course, aren't you? [776]

A. Yes, after you get through the soil that tunnel is in rock; I didn't say it wasn't; I said those cuts were in the wash.

Q. You said the cuts; in the little figures, were in the wash? A. Yes.

Q. I am not disputing that, of course they are in the wash, but at this point, this adit or tunnel is in solid rock.

A. It started in the wash, and ran into solid rock.

Q. But it is in solid rock all right?

A. Yes, the tunnel is in solid rock; it would not have stood up if it hadn't been.

Q. This adit or tunnel represented in Defendant's Exhibit 21, is right across the gulch on the opposite hill, isn't it?

A. Yes, just about where I made that mark, as near as I can make it on the map, if that is a picture of that tunnel.

Q. The gulch runs right down along here, and this tunnel is on the south side of the gulch?

A. Yes.

Q. And of course on the north side of the gulch there is a hill also?

(Testimony of Robert L. Phillips.)

A. Yes; and where that tunnel is the hill goes up steeper there, following up the south end line of the Evening Star.

Mr. SPRINGMEYER.—That is all.

Mr. THATCHER.—By the way, I want to ask you one question, Mr. Phillips, did you ever see a ledge or outcropping, about 20 or 30 or 40 feet south of the discovery point on Salt Lake No. 3? A. No, sir.

Q. Is there any place in there where there is hard rock and croppings? A. There is not, no.

Q. Have you worked about and below this gulch?

A. I have.

Q. What is the distance to the bedrock any place along in there? A. It is from 35 to 55 feet.

Mr. THATCHER.—That is all. [777]

Mr. SPRINGMEYER.—(Q.) You didn't seem to have an eye for anything but wash anywhere on those claims, did you?

A. Well, I would have had to have pretty good eyes to see anything else.

Q. You were prospecting for wash largely, weren't you? A. No, sir, I was not.

Mr. SPRINGMEYER.—That is all.

Mr. THATCHER.—(Q.) Have you any placer gold, Mr. Phillips, taken out of that gulch?

A. I have, yes, sir.

Q. Will you show it to the jury?

Mr. SPRINGMEYER.—I suppose that is some of the placer gold you have that makes these claims worth a hundred thousand dollars, Mr. Phillips?

A. Well, it is some just like that.

(Testimony of Robert L. Phillips.)

Q. You said the claims were worth that amount of money, didn't you, net? A. I did, yes.

(The placer gold is exhibited to the jury.)

Mr. SPRINGMEYER.—I think those should, certainly be offered in evidence before they are exhibited to the jury.

Mr. THATCHER.—If you make that objection they will have to go out.

Mr. SPRINGMEYER.—I think you ought to offer it in evidence, and withdraw them after the trial.

Mr. THATCHER.—I withdraw the offer, and withdraw them as exhibits.

Mr. SPRINGMEYER.—Nothing further. [778]

**Testimony of F. D. Brown (Recalled in Rebuttal).**

Mr. F. D. BROWN, called in rebuttal, testified as follows:

Mr. THATCHER.—(Q.) Mr. Brown, you were the caretaker for Mr. Ralph? A. Yes, sir.

Q. And his agent upon the ground?

A. Why, I sort of represented him there; I went out to take care of the property was all.

Q. And were you his agent in the application for patent? A. Yes, sir.

Q. And attorney in fact? A. Yes, sir.

Q. Did you receive any location notice from Salt Lake from Mr. Gillette? A. No, sir.

Q. You did not? A. No, sir.

Q. From whom did you receive one?

A. I received a letter from Mr. Gillette.

Q. What was the instruction in the letter?

Mr. SPRINGMEYER.—I object on the ground it is immaterial, and not proper rebuttal testimony.

Mr. THATCHER.—(Q.) Have you the letter with you?

Mr. SPRINGMEYER.—And we object further on the ground it is not binding upon this defendant, and hearsay.

Mr. THATCHER.—I have a stipulation, Mr. Springmeyer, with reference to these claims, allowing you to do your location work on them, in which it is stated they were located by F. D. Brown and Joseph Ralph—you have stipulated to that.

Mr. SPRINGMEYER.—That does not change my objection. I do not think it is proper rebuttal testimony.

Mr. THATCHER.—If I can show, if the Court please, that F. D. Brown and Joseph Ralph located the identical ground in controversy here subsequent to our locations, by the posting of a notice, [779] located them as placer, there is their solemn declaration in writing that they are placer ground, and that rebuts the testimony that Mr. Ralph has given here that they were valuable lode claims.

The COURT.—I cannot agree with you on that. I will sustain the objection.

Mr. THATCHER.—We offer the three notices of location, and would like to have them marked for identification. In connection with that we likewise offer the stipulation heretofore filed, and ask that it be marked for identification. I would like to reserve an exception to the ruling of the Court also,

(Testimony of F. D. Brown.)

if your Honor please.

The COURT.—It will be understood that all the documents you have there, the three notices of location and the stipulation, are offered in evidence, and the same objection has been made to each.

Mr. SPRINGMEYER.—The same objection to all of them.

The COURT.—It will be the same ruling, and the same exception. [780]

**Testimony of A. H. Crampton, for Plaintiffs (in Rebuttal).**

Mr. A. H. CRAMPTON, called as a witness on behalf of plaintiffs in rebuttal, after being sworn, testified as follows:

Mr. THATCHER.—(Q.) What is your business, Mr. Crampton? A. Mining.

Q. How long have you been mining?

A. About twenty-five years.

Q. Placer and quartz both? A. Yes, sir.

Q. How long have you mined in Nevada?

A. Since 1904, off and on.

Q. Are you familiar with the ground in controversy here? A. Yes, sir, part of it.

Q. And the surface ground? A. Yes.

Q. Did you live on the ground within the Homestake Placer? A. I did for about four months.

Q. You are Mr. Phillips' partner, I understand?

A. Yes.

Q. And you and he were interested in a lease on the south two hundred feet of the Homestake Placer? A. We were.

(Testimony of A. H. Crampton.)

Q. Have you been over this ground in here?

A. Yes.

Q. This yellow streak painted on Mr. Tibby's map, have you been along that country? A. I have.

Q. Generally, what is the nature of that country?

A. It is wash and overburden.

Q. Would it take workings to expose and get into hard rock?

A. It would with the exception of one place.

Q. There might be one or two places where hard rock might be exposed?

A. There is one place where they have made that cut on there.

Q. That is south?

A. That would be the northerly cut. [781]

Q. You mean the northerly cut? A. Yes.

Q. I mean on the claim itself. A. No.

Q. Is that all wash? All wash, absolutely.

Q. Do you know of three cuts south of point 69, marked here "Discovery on Evening Star," south of that big white cut? A. I do, yes, sir.

Q. What are those cuts?

A. They are three parallel cuts running into a bank of wash.

Q. I call your attention to Plaintiffs' Exhibit "A–12," and ask you if you took that picture?

A. I did.

Q. Is that of the three cuts to the south, running into the wash you testified to? A. They are.

Q. Where was that taken?

A. That was taken while I was standing perhaps

(Testimony of A. H. Crampton.)

forty feet from those, or fifty.

Q. Forty or fifty feet from them when you took it?

A. Yes.

Q. I call your attention to Plaintiffs' Exhibit "A-13," and ask you what that is a picture of?

A. That is a picture of the white dump on the Evening Star.

Q. Where is that taken from?

A. Standing on the dumps of where these three cuts are here.

Q. Mr. Crampton, do you know generally the center line of the Salt Lake No. 3 and Guy Davis—the center line?

A. Only from what I have heard in here, where they are claiming their center line.

Q. Do you know where the gulch is? A. I do.

Q. Do you know where the road is? A. Yes.

Q. Do you know where the office and the various houses are along there?

A. Yes, sir, I lived right near there.

Q. Do you know where the location discovery point is on the Salt Lake No. 3?

A. Only just since I have been in here, where [782] they have claimed it is.

Q. Did you ever see that peg driven in the ground there? A. I never noticed it.

Q. You know where this point is on the ground, do you? A. Yes.

Q. South of that, twenty, or thirty or forty feet, a place where the hard rock crops in there?

A. No, sir.

(Testimony of A. H. Crampton.)

Q. Have you been up to two little shafts on the back sidehill, back of these houses?

A. No, I had them pointed out, but there is outhouses over them now.

Mr. SPRINGMEYER.—You said the "back sidehill," did you, General?

Mr. THATCHER.—No, back on the hill here. (Q.) Have you been up to those houses?

A. Yes, sir.

Q. You have been up there? A. Yes.

Q. Do you know what the nature of the excavations on the cuts is?

A. Well, they must have been shafts; there are outhouses over them now, but there are dumps.

Q. Is it wash or hard rock, the nature of the excavation?

A. The dumps around it is wash from the hillside.

Q. Wash from the hillside? A. Yes.

Q. You have placer mined in this gulch, have you?

A. Yes.

Q. Now, that road, 20 or 30, or 40 or 50 feet, is there any place where you can reach the bedrock or hard rock, in your opinion, in less than 35 or 40 feet?

A. I think not.

Q. Do you remember a hard rock cut over on this edge of the claim easterly from the three cuts which you have pointed out?

A. Up the side of that hill?

Q. Yes. A. Yes.

Q. South of the Evening Star? A. Yes.

Q. You saw that cut, did you? A. Yes. [783]

(Testimony of A. H. Crampton.)

Q. How far easterly of those three cuts was that cut? A. Well, I would not be positive as to that.

Q. Did you ever pace it off? A. No, I did not.

Q. Can you approximate it?

A. I should judge one hundred and fifty feet, or something.

Mr. THATCHER.—That is all.

Cross-examination.

Mr. SPRINGMEYER.—(Q.) You said you were Mr. Phillips' partner in a lease on the Homestake, was it? A. Yes, sir.

Q. You and Mr. Phillips still have that lease, have you? A. Yes, sir.

Q. How wide is the gulch running south of the Evening Star toward the west, approximately, if you know? A. The gulch running west?

Q. Yes. A. On the Evening Star?

Q. South of the Evening Star, it would be partly on the Evening Star.

A. Well, as I remember, it slopes down very gradually from this white dump very nearly to these three dumps, then there is a little bank of gravel or wash.

Q. It is several hundred feet wide, isn't it, then, Mr. Crampton?

A. Well, it would be from that white dump to those other cuts, about three hundred feet.

Q. Do you know a tunnel or adit on Lemaire's claim, south of the Evening Star—I think you testified to that. Is that a picture of that tunnel (Defendant's Exhibit No. 21)? A. I think so.

Q. Is that tunnel or adit in solid rock?

(Testimony of A. H. Crampton.)

A. Well, after they had gone in for two or three feet, I think they got into solid rock, after they went through the overburden.

Q. You think they did, you say? A. Yes.

Mr. SPRINGMEYER.—That is all. [784]

**Testimony of W. T. Moran (Recalled in Rebuttal).**

Mr. W. T. MORAN, called in rebuttal, testified as follows:

Mr. THATCHER.—(Q.) Mr. Moran, did you run the center line, actually run it?

A. Yes, sir, I surveyed the line out.

Q. Actually surveyed that line out in making this survey? A. Yes.

Q. Did you pay particular attention to that lode line? A. I did.

Q. Since hearing the testimony of Mr. Tibby and Mr. Ralph, or any of the other witnesses, have you any reason to change your testimony?

A. None whatever.

Q. Do I understand you at no place along that lode line is there any outcropping of hard rock?

A. There is no outcrop.

Q. I call your attention to a point marked here in red, was there anything at or near that point, 20 feet south of discovery? A. No, sir, there is not.

Q. Anything in the nature of hard rock?

A. No, sir.

Q. I call your attention to point 28, was there likewise, another shaft there, another outhouse shaft?

A. There are two excavations there covered with outhouses.

(Testimony of W. T. Moran.)

Q. Why did you put this one on and not the other?

A. Why, that was given on the patent plat as discovery shaft of Salt Lake No. 3; I didn't identify either of those shafts until I had almost completed my survey, then I had access to the patent plats; there were a couple of Southern Pacific engineers in there at the time, and they had the plats with them, and I noticed in referring to the patent plat that this excavation covered by the outhouse was claimed as the discovery shaft of the Salt Lake No. 3; that is the reason I located that.

Q. Did you go and look at them then? A. Yes.

[785]

Q. What was the character with reference to the soil, or what was shown in them?

A. It is simply a surface soil or earth fill.

Q. No hard rock there? A. No hard rock there.

Q. What is the general slope from the discovery monument on these claims, westerly?

A. It rises towards the west.

Mr. THATCHER.—I think that is all.

Cross-examination.

Mr. SPRINGMEYER.—(Q.) Mr. Moran, you ran the boundaries of the Salt Lake No. 3, Midas and Evening Star, and of the Guy Davis and Homestake Placer, went over all the buildings, all the workings, and made a careful examination of the claims here in controversy, during the two days you were in the canyon, did you not?

A. Why, I didn't state that I had run around the boundary lines of the Midas and Evening Star and

(Testimony of W. T. Moran.)

Salt Lake No. 3; but I established the position of those lines through different ties; I didn't set up on one corner of the Salt Lake, for instance, and run right around the boundary lines, because it wasn't necessary to establish the position of those corners.

Q. You ran the boundaries altogether?

A. Ran right around the boundaries of the claims.

Q. Yes; didn't you run the boundaries of those claims?

A. No, I didn't run the boundaries of them; I established the position of all the corners of the lines through accurate survey ties.

Q. You established the position through accurate survey ties? A. Yes.

Q. You made the ties? A. Yes.

Q. You made the examination of these biuldings, the mill and the road, and all the workings, and you examined the surface even [786] on those claims during that same period of time, didn't you?

A. Well, there wasn't much to examine about the buildings or the roads, simply to look at them as I was passing by them; I will say that I could do that surveying, and tie all those buildings and the work in, in one day, if we got up about 5 o'clock in the morning and worked till 8 in the evening; I am satisfied I could do that in one good day's work.

Q. You don't get out quite that early, though, or work quite that late, do you?

A. Yes, we did; it was practically daylight when we got up.

Q. You did two pretty good day's work then, didn't you? A. Yes, very good.

(Testimony of W. T. Moran.)

JUROR.—(Q.) How far is it from Salt Lake No. 3, down to the end of the Midas?

A. It is practically three thousand feet; Salt Lake No. 3 is practically 1500 feet long, and the Midas is also practically that length, so in going from the northeast corner of the Salt Lake to the southeast corner of the Midas you would be travelling practically three thousand feet.

Q. How wide? A. Practically six hundred feet.

Q. Both the Evening Star and the Midas?

A. Yes, the three lode claims are practically six hundred feet wide by fifteen hundred feet long.

Mr. SPRINGMEYER.—(Q.) That is, each of them is that size? A. Yes.

JUROR.—(Q.) It is three thousand feet from Salt Lake No. 3 down to the end of the Midas?

A. Yes, it is two claims length.

Mr. THATCHER.—I forgot to ask Mr. Moran a question or two.

Q. Mr. Moran, were you down in through here (indicating on map)? A. Yes, sir. [35]

Q. Along this line? A. Yes, sir.

Q. Did you find any vein on that yellow streak delineated on that map?

A. That is purely imaginary.

Q. Did you find anything south of it—what is the condition of the country south of it?

A. It is covered with an earth fill, and sagebrush.

Q. Were you down to these three cuts, and also this one cut? A. No, I didn't go down to those cuts.

Q. Is there any vein exposed on the south end of

(Testimony of W. T. Moran.)

the Evening Star? A. No, sir, there is not.

Mr. THATCHER.—That is all. I would like to recall Mr. Healey for just a minute.

**Testimony of John J. Healey (Recalled in Rebuttal).**

Mr. JOHN J. HEALEY, recalled in rebuttal, testified as follows:

Mr. THATCHER.—(Q.) Mr. Healey, I show you a paper, and ask you if you have ever seen that before? (Hands to witness.) A. Yes, sir, I have.

Q. Where did you see it; don't say what paper, but just where you saw it? A. On the Midas claim.

Q. Whereabouts on the Midas claim?

A. At the location monument.

Q. At the white pine post marked "Location Discovery"?

A. Yes, sir, marked "Location Discovery."

Q. Show it on the map, if you can. (The witness indicates the point on Plaintiffs' Exhibit "A.")

Q. Was it posted there, or in a can, or what condition was it in?

A. It was in a cap box, buried about four or five inches, and under the soil, near the bottom of the post. [788]

Mr. THATCHER.—We offer it in evidence, if the Court please.

Mr. SPRINGMEYER.—Object to it on the ground it is immaterial; on the further ground it does not comply with the statute as to amended certificates of mining claims, that it is not signed, or does not purport to be signed for or on behalf of the locator of

(Testimony of John J. Healey.)

the mining claim; on the further ground it is not shown by the evidence that it was placed at this particular point by the locator or owner of the claim; also on the ground that it is not proper rebuttal.

The COURT.—What is the purpose of this?

Mr. THATCHER.—It has been testified with reference to the Midas, if the Court please, that the discovery notice was posted here (shows on map), and when the patent is applied for, the plat shows it here, and the amended location certificate shows it here.

Mr. SPRINGMEYER.—That is signed by Liddell and Liddell; there is no showing that it was placed at that point by them, or the then owners of the claim.

The COURT.—I do not see how the Court can be bound by this; it is apparently an attempt to locate this by Liddell and Liddell, and there is no testimony in the case so far, that Liddell and Liddell were connected with any of the parties in the case.

(Discussion.)

Mr. THATCHER.—I will take up the other one, if the Court please, and let them be marked for identification.

Q. Mr. Healey, I call your attention to another piece of paper; where did you find that? (Hands to witness.)

A. I found that at the location discovery point of the Evening Star.

Q. That is the white pine post that is now on the ground? A. Yes. [789]

Q. What was it in?

(Testimony of John J. Healey.)

A. It was in a cap box, buried about four or five inches under the ground.

Q. Buried about four or five inches under the ground? A. Yes, sir at the discovery point.

Q. And posted, was it? A. Yes.

Mr. THATCHER.—We offer it in evidence, together with a certified copy of the location certificate of the same claim, Evening Star.

Q. It is the same post where it is right now, isn't it, on the Evening Star? A. Yes.

Q. That white pine post now marked "Location Discovery?" A. Yes, sir.

The COURT.—(Q.) When did you say you found this?

A. I found that some time along in November.

Q. Of what year? A. 1913.

Mr. THATCHER.—(Q.) That was introduced in evidence in the last trial, was it not, Mr. Healey?

A. Yes, sir, introduced by the plaintiff.

The COURT.—Are you through with all the testimony you have to offer with reference to this?

Mr. THATCHER.—Yes, sir, I am through.

Mr. SPRINGMEYER.—I want to ask a question on the former examination.

Mr. THATCHER.—No objection.

Mr. SPRINGMEYER.—(Q.) Did I understand you to say that you saw Smith carry a monument on the Salt Lake No. 3 Claim?

A. I did, yes, sir.

Q. What date was that?

A. Some time along about between the 20th and

(Testimony of John J. Healey.)

23d or 24th of December.

Q. What year? A. 1913. [790]

Q. What sort of a monument was it?

A. It was a wooden post.

Q. Where was he carrying it to?

A. He carried it up, and laid it up, to where he was working.

Q. Where was that?

A. The open cut that is marked there now number 2.

Q. Do you know whether anybody had carried it away prior to that time?

A. I don't know, I had never seen it there; I don't know whether anybody had ever carried it away or not.

Q. You had never seen it there before?

A. No, sir.

Q. You had looked before?

A. I had; I had been all over that ground—looked thoroughly.

Q. You have been quite successful in finding everything in regard to these claims just in the way you wanted them to suit your case, haven't you?

A. Not exactly.

Mr. SPRINGMEYER.—That is all.

The COURT.—I shall sustain the objection to this last exhibit that was offered on the ground that it is not shown that that notice was posted on the claim, or put on the claim at the time Joseph Farrin was the owner, and the certificate shows it was filed for record by Joseph Farrin after he ceased to have an interest

or ownership in the property.

Mr. THATCHER.—Mr. Springmeyer, will you admit, without my putting Mr. Moran on the stand, that he would testify from an examination of the notes shown in these certificates, that the description shown in those certificates complies substantially with these two claims as monumented on the ground now, and shown in your patent plat?

The COURT.—You don't propose to follow this up by showing any transfer from Liddell and Liddell? [791]

Mr. THATCHER.—No, sir; that certificate in there is one of the certificates provided for by statute with reference to a licensed surveyor, or United States Mineral Surveyor.

Mr. SPRINGMEYER.—I think we will admit that, General.

Mr. THATCHER.—That he would testify; I don't want the testimony in, but so the foundation is there in the event the Court should change its ruling. And we ask for the benefit of an exception to the Court's ruling.

The COURT.—The location certificate of the Yellow Jacket will be admitted, the objections to it will be overruled.

Mr. ELLIS.—We ask an exception.

The COURT.—The notice is already admitted.

Mr. SPRINGMEYER.—We take an exception to the ruling on the grounds stated in our objection.

(Recess for five minutes. After recess.)

The COURT.—I think I must adhere to the ruling

I made with reference to this certificate of Liddell and Liddell; if it were shown it was made at the request of the locator or owners of the property, I think it would be admissible; but I don't think that has been established sufficiently to permit the document to be admitted. I think there were four documents in the offer.

Mr. THATCHER.—Yes. We reserve an exception, if the Court please, upon the grounds and for the reason that it is proper rebuttal, showing the present location of the claims, and showing an amendment of the location, and adoption of a new discovery, being the same discovery point testified to as now being on the ground by all of the witnesses.

The COURT.—I don't want you to misunderstand me; I think the document would be admissible, provided it were identified as being the act of the locator or owner of the claim. [792]

Mr. SPRINGMEYER.—May it please the Court, you reserved your ruling with regard to some documents—some assay certificates—which we tendered.

The COURT.—With reference to those assays, I have concluded to admit them, with a definite instruction. They range themselves naturally into three different classes: There are assays that were taken from the ground that was exposed at the time of the placer locations; those have already been admitted. Then there are assays that were taken from cut number 2; those are the ones I understand you insist on. That work was done subsequent to the placer location, and you claim now that you knew of that cut before

the placer location. I shall instruct the jury that it is for them to determine whether you had made a discovery of a vein before that time; and it is necessary that Mr. Ralph, who is the owner, and whom you claim made the discovery, should have made, and appreciated the fact that he did make, a discovery at that time; and whether he did make, and appreciate that he had made, a discovery at that time, must be determined by his conduct and his acts at the time. The jury will be instructed they have a right to consider just what he did with reference to it, and what he did not do; and if they find that he did actually make a discovery of a vein at that time, which disclosed mineral sufficient to warrant a prudent man expending his money in the anticipation of discovering a vein, this proof can go in to substantiate that conclusion.

With reference to the cuts on the Midas, there were two veins, I think, disclosed, and in one of them, only, you offer samples taken four feet below any exposure in existence at the time of the placer locations. Those I will admit also.

Inasmuch as I am doing this, I will say very frankly, gentlemen, [783] I do not feel very confident as to the correctness of the ruling. The authorities that have been submitted are not decisive of the matter. Good reasons can be given why the ruling should be sustained, and equally good reasons why it is an error. I shall also exercise my discretion, and allow plaintiffs, under the circumstances, to reopen their case, and offer the certificates of assay that

(Testimony of John J. Healey.)

were presented by Mr. Healey and Mr. Phillips. They are not proper rebuttal, there is no question about that, and the objection to them was good, but I shall exercise my discretion in the matter, and overrule the objection. Of course that ruling will admit Mr. Ralph's testimony as to the character of the ore in that shaft. You have an exception to my refusal to allow him to *testimony* as to what he called his four-foot vein.

Mr. SPRINGMEYER.—Your Honor will allow as exhibits, then, the samples which we took and offered in evidence from those same points?

The COURT.—I understand there is no question raised as to the correctness of the assays?

Mr. SPRINGMEYER.—No, as submitted by both parties.

The COURT.—You present your certificates on both sides without any testimony on the part of the assayer that the assays were correctly made?

Mr. THATCHER.—Yes. In this connection, if the Court please, I would like to offer the samples of Mr. Phillips, which he identified on his direct examination as having been taken.

The COURT.—You understand, gentlemen, you lose now the exceptions you have taken to my refusal to allow testimony as to the condition of veins that were discovered before the placer locations, even though the exposures were not made at that time.

[794]

Mr. SPRINGMEYER.—It will be necessary for us to have these assay certificates identified as to the

(Testimony of John J. Healey.)

point from which they were taken.

The COURT.—I think they were all identified at the time.

Mr. SPRINGMEYER.—And sack number 1, the sample Mr. Ralph offered, is then admitted in evidence, also.

The COURT.—That was taken from one of the veins that you discovered before the placer location, but from ground that was not exposed at that time.

Mr. SPRINGMEYER.—Yes. If I may ask Mr. Liddell and Mr. Tibby a few questions I think I can clear this up.

**Testimony of Benjamin F. Tibby, for Defendant (Recalled).**

Mr. BENJAMIN F. TIBBY, called for further examination by defendant, testified as follows:

Mr. SPRINGMEYER.—(Q.) The numbers on the assay certificates as I understand it; conform to the numbers on the map, is that correct?

A. Well, not altogether; for instance number 14 on the map, four samples were taken from there, numbered 14, 15, 16 and 17, I think.

Mr. THATCHER.—You testified to that the other day?

A. I think not; but I have marked on the slips the locations from which they were taken.

The COURT.—You testified that 66, 67 and 68 were taken down in the drift, and they were not admitted.

WITNESS.—They are all marked on these new certificates, so it will be all right anyhow; they will

be identified from the notations on the slips themselves.

Mr. SPRINGMEYER.—It may be understood that the identification on the slips is such as to show from whence they came. They may [795] be marked as one exhibit.

(The assay certificates are marked Defendant's Exhibit No. 44, and read as follows:)

**Defendant's Exhibit No. 44—Assay Certificates—Tibby Samples.**

ASSAY CERTIFICATE.

| Sample | Oz. Gold | Oz. Silver | % Copper | Total Value |
|---|---|---|---|---|
| No. 9, 0.1 Ft. | .04 | 3.4 | .25 | $3.50 |
| Shaft No. 9. | | | | |

R. H. OFFICER & CO.,
Assayers,
Salt Lake City, Utah.

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ASSAY CERTIFICATE.

| Sample | Oz. Gold | Oz. Silver | % Copper | Total Value |
|---|---|---|---|---|
| No. 10, 0.3 Ft. | .16 | 3.7 | .60 | $8.21 |
| Shaft No. 9. | | | | |

R. H. OFFICER & CO.,
Assayers,
Salt Lake City, Utah.

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ASSAY CERTIFICATE.

| Sample | Oz. Gold | Oz. Silver | % Copper | Total Value |
|---|---|---|---|---|
| No. 13, 0.5 Ft. | .06 | 1.1 | .35 | $2.24 |
| Cut No. 14. | | | | |

R. H. OFFICER & CO.,
Assayers,
Salt Lake City, Utah.

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ASSAY CERTIFICATE.

| Sample | Oz. Gold | Oz. Silver | % Copper | Total Value |
|---|---|---|---|---|
| No. 14, 0.5 Ft. | .17 | 1.0 | .55 | $5.88 |
| Cut No. 14. | | | | |

R. H. OFFICER & CO.,
Assayers,
Salt Lake City, Utah.

ASSAY CERTIFICATE.

| Sample | Oz. Gold | Oz. Silver | % Copper | Total Value |
|---|---|---|---|---|
| No. 15, 0.2 Ft. Cut No. 14. | .19 | 4.4 | 1.05 | $9.78 |

R. H. OFFICER & CO.,
Assayers,
Salt Lake City, Utah. [796]

ASSAY CERTIFICATE.

| Sample | Oz. Gold | Oz. Silver | % Copper | Total Value |
|---|---|---|---|---|
| No. 16, 0.2 Ft. Cut No. 14. | .24 | 4.8 | 1.15 | $11.14 |

R. H. OFFICER & CO.,
Assayers,
Salt Lake City, Utah.

ASSAY CERTIFICATE.

| Sample | Oz. Gold | Oz. Silver | % Copper | Total Value |
|---|---|---|---|---|
| No. 43, Midas, Long Tunnel Point 42, .3 Ft. | .04 | .3 | .5 | $2.75 |

R. H. OFFICER & CO.,
Assayers,
Salt Lake City, Utah.

ASSAY CERTIFICATE.

| Sample | Oz. Gold | Oz. Silver | % Copper | Total Value |
|---|---|---|---|---|
| No. 44, Midas Long, Tunnel Point 42, .3 feet. | .02 | .3 | .4 | $2.24 |

R. H. OFFICER & CO.,
Assayers,
Salt Lake City, Utah.

ASSAY CERTIFICATE.

| Sample | Oz. Gold | Oz. Silver | % Copper | Total Value |
|---|---|---|---|---|
| No. 45, Midas Long, Tunnel Point 42, .5 foot. | .14 | 13.1 | .7 | $11.87 |

R. H. OFFICER & CO.,
Assayers,
Salt Lake City, Utah.

ASSAY CERTIFICATE.

| Sample | Oz. Gold | Oz. Silver | % Copper | Total Value |
|---|---|---|---|---|
| No. 53, Short Cut at Point 53, 1 Foot. | .08 | 1.1 | .25 | $3.05 |

R. H. OFFICER & CO.,
Assayers,
Salt Lake City, Utah. [797]

ASSAY CERTIFICATE.

| Sample | Oz. Gold | Oz. Silver | % Copper | Total Value |
|---|---|---|---|---|
| No. 66, Evening Star, Big Cut Point 60. | .08 | .1 | .05 | $1.83 |

R. H. OFFICER & CO.,
Assayers,
Salt Lake City, Utah.

ASSAY CERTIFICATE.

| Sample | Oz. Gold | Oz. Silver | % Copper | Total Value |
|---|---|---|---|---|
| No. 67 Evening Star, Big Cut Point 60. | .02 | .4 | .05 | $.78 |

R. H. OFFICER & CO.,
Assayers,
Salt Lake City, Utah.

Mr. SPRINGMEYER.—There is also a photograph of cut number 14, that may go in as an exhibit?

The COURT.—Very well.

(The photograph is marked Defendant's Exhibit No. 45, and Sack 1, containing sample, is marked Defendant's Exhibit No. 46.)

Mr. SPRINGMEYER.—Mr. Liddell's certificates also show on the face from where they are taken, and if it may be understood that the identification is as indicated on the slips, it will suffice.

Mr. THATCHER.—That is correct.

(The Affidavits of Labor heretofore offered in evidence are marked Defendant's Exhibits Nos. 47 and 48, and read as follows:) [798]

**Defendant's Exhibit No. 47—Affidavit of H. R. Lemaire.**

VERIFCATION.

State of Nevada,
County of Lander,—ss.

H. R. Lemaire, being duly sworn, deposes and says: That he is H. R. Lemaire, the duly qualified, authorized and acting District Recorder of the Battle Mountain Mining District, County and State aforesaid; that as such District Recorder he has charge and custody of the Mining Records of his office and that the within annexed sheets, each of which, for the purpose of identification and description has been signed at the top thereof with his sign manual, and in and by his own hand, and numbered as hereinafter described, are full, true and correct copies of the pages of the said mining records therein enumerated;

Said annexed sheets numbering five in all, and marked respectively: Half Sheet No. 1; Sheet No. 1; Sheet No. 2; Sheet No. 3; Sheet No. 4;

And this affiant further deposes that he has, in person, carefully read and examined the five within annexed sheets, and that he has carfully compared them, and the contents thereof with the official records of his office, and that they are full, true, complete and verbatim copies of said records, as entered

therein on the respective pages in the within annexed sheets enumerated.

The foregoing verification of said copies is hereby made and subscribed to by me, under my seal of office, at Battle Mountain, Nevada, this 24th day of May, A. D. 1915.

[Seal] H. F. LEMAIRE,
District Recorder, Battle Mountain Mining District, County of Lander, State of Nevada.

Subscribed and sworn to before me this 24th day of May, A. D. 1915.

[Seal] FRANK J. KINGHORN,
Notary Public.

My Commission expires February 10, 1919. [799]

Signed—H. R. LEMAIRE.

Half Sheet No. 1.

Proof of Labor.

State of Nevada,
County of Lander,—ss.

Before me, the subscriber, who, being duly sworn, says that at least forteen hundred dollars worth of labor or improvements were performed or made upon The Salt Lake No. 1, No. 2, No. 3, No. 4, No. 5, John-John, Reona, Lucy, Blue Jacket, Eagle, Yellow Jacket, Midas, Evening Star and Copper Queen mining claims situated in Battle Mountain Mining District, County of Lander, State of Nevada, during the year ending December 31st, A. D. 1910. Such expenditure was made by or at the expense of the Glasgow Western Exploration Company, (Limited),

owners of said claims for the purpose of holding said claims.

Signed—(JOSEPH JUREY).

Subscribed and sworn to before me this 22d day of Decbr. A. D. 1910.

[Seal] L. A. LEMAIRE,
Notary Public.

RECORDED at the request of Joseph Jurey, Dec. 22 A. D. 1910, at 7 o'clock P. M. at page 403 of book 1 of records of Battle Mountain Mining District, Lander County, Nevada.

H. R. LEMAIRE,
District Recorder.

Signed—H. R. LEMAIRE.

GLASGOW & WESTERN EXP. CO.
Dec. 24th, 1907.

Sheet No. 1.

Proof of Labor.

State of Nevada,
County of Lander,—ss.

I, Joseph Jurey, being first duly sworn on his oath says that I am the foreman for the Glasgow and Western Exploration Company, Limited, the owners of the following Lode Mining claims situate in Battle Mountain Mining District, Lander County, State of Nevada, and I make this affidavit on their behalf. The $100 worth of mining labor and improvements required by law to be performed [800] or made upon the following mining claims during the year 1907, was made and performed upon said mining claims. The amount of money expended for

that purpose was $100 on each. The John-John and Salt Lake No. 5.

The work was done and performed at the request and expense of the Glasgow and Western Exploration Company, Limited, the owners of said claims.

JOSEPH JUREY.

State of Nevada,
County of Lander,—ss.

On this 27th day of December A. D. one thousand nine hundred and seven, personally appeared before me, J. G. Moore, a Notary Public in and for the County of Lander, Joseph Jurey, known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have set my hand and affixed my official seal at my office in the County of Lander, the day and year in this certificate first above written.

[Seal] JAMES G. MOORE,
Notary Public in and for the County of Lander, State of Nevada.

RECORDED at the request of Joseph Jurey, Dec. 27, A. D. 1907, at 8 o'clock A. M. at page 496 of book H of Battle Mountain Mining District, Lander County, Nevada.

H. R. LEMAIRE,
District Recorder,
By B. E. Blackley,
Deputy.

JOHN JOHN.

NOTICE OF ASSESSMENT.

Copper Canyon, Nov. 18th, 1906.

We, Joseph Jurey, Wm. T. Jurey, do this above-mentioned date depose and swear that within the last sixty days we have done at least $100.00 worth of work (as assessment work) on the claim known as the John John, in the shape of driving tunnel, situate in Battle Mt. Mining Dist., Lander County, Nevada. [801]

JOSEPH JUREY,
WM. T. JUREY.

RECORDED at the request of Joseph Jurey, Nov. 18th, 1906, at 12:20 o'clock P. M., at page 50 of Book H, Battle Mountain Mining District, Lander County Nevada.

H. R. LEMAIRE,
Dist. Recorder.

LUCY.

NOTICE OF ASSESSMENT.

Copper Canyon, Nov. 17th, 1906.

We, Joseph Jurey, Wm. T. Jurey, do this above mentioned date depose and swear that within the last sixty days we have done at least $100.00 worth of work (as assessment work) on the claim known as the Lucy, in the shape of driving tunnel on ledge. Situated in Battle Mountain Mining Dist., Lander County, Nev.

JOSEPH JUREY,
WM. T. JUREY.

RECORDED at the request of Joseph Jurey, Nov. 18th, 1906, at 12:30 o'clock P. M., at page 50

of Book H, Battle Mountain Mining District, Lander County Nevada.

H. R. LEMAIRE,
Dist. Recorder.

Sheet No. 2.

Signed—H. R. LEMARIE.

Proof of Labor,
State of Nevada,—ss.

GLASGOW & WESTERN EXP. CO.
Dec. 24th, 1907.

I, Joseph Jurey, being first duly sworn, on his oath says that I am the foreman for the Glasgow and Western Exploration Company, Limited, the owners of the following lode mining claims situate in Battle Mountain Mining District, Lander County, State of Nevada, and I make this affidavit in their behalf. The $100 worth of mining labor and improvements required by law to be performed or made upon the following mining claims during the year 1907 was made and performed upon said mining claims. The amount of money expended for that purpose was $100 on each the Blue Jacket, "The Eagle," The Salt Lake No. 2, Salt Lake No. 3, the work was done and performed at the request and expense of the [802] Glagow and Western Exploration Company, Limited, the owners of said claims.

JOSEPH JUREY.

State of Nevada,
County of Lander,—ss.

On this 27th day of November A. D. one thousand

nine hundred and seven personally appeared before me J. G. Moore, a notary public, in and for the County of Lander, Joseph Jurey, known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the county of Lander, the day and year in this certificate first above written.

[Seal] J. G. MOORE,
Notary Public in and for the County of Lander, State of Nevada.

RECORDED at the request of Joseph Jurey, Dec. 27th A. D. 1907, at 8 o'clock A. M., at page 493 of book H of Battle Mountain Mining District, Lander County, Nevada.

H. R. LEMAIRE,
District Recorder,
By B. E. Blackley,
Deputy.

PROOF OF LABOR.
GLASGOW AND WESTERN EXP. CO.
Dec. 24th, 1907.

State of Nevada,
County of Lander,—ss.

I, Joseph Jurey, being first duly sworn, on his oath says that I am the foreman for the Glasgow and Western Exploration Company, Limited, the owners of the following lode mining claims, situate in Battle Mountain Mining District, Lander County,

State of Nevada, and I made this affidavit in their behalf. The $100 worth of mining labor and improvements required by law to be performed or made upon the following mining claims during the year 1907, was made and performed upon said mining claims. The amount [803] of money expended for that purpose was $100 on each; The Salt Lake No. 4, Salt Lake No. 1, Reona and Lucy. The work was done and performed at the request and expense of the Glasgow & Western Exploration Company, Limited, the owner of said claims.

JOSEPH JUREY.

State of Nevada,
County of Lander,—ss.

On this 27th day of December, A. D. one thousand nine hundred and seven personally appeared before me J. G. Moore, a notary public in and for the County of Lander, Joseph Jurey, known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in the county of Lander, the day and year in this certificate first above written.

[Seal] JAMES G. MOORE,
Notary Public in and for the County of Lander, State of Nevada.

RECORDED at the request of Joseph Jurey, Dec. 27, A. D. 1907, at 8 o'clock A. M., at page 495

of book H of Battle Mountain Mining District, Lander County, Nevada.

H. R. LEMAIRE,
District Recorder,
By B. E. Blackley,
Deputy.

Sheet No. 3.

Signed by H. R. LEMAIRE.

PROOF OF LABOR.

GLASGOW-WESTERN EXP. CO.

State of Nevada,
County of Lander.

I, Joseph Jurey, being first duly sworn, on his oath says that I am the foreman for the Glasgow and Western Exploration Company, Limited, the owners of the following lode mining claims, situate in Battle Mountain Mining District, Lander County, [804] State of Nevada, and I make this affidavit in their behalf. The $100.00 worth of mining labor and improvements required by law to be performed or made upon the following mining claims during the year 1908, was made and performed upon said mining claims. The amount of money expended for that purpose was $100.00 on each. The Blue Jacket, The Eagle, The Salt Lake No. 1, The Salt Lake No. 2, The Salt Lake No. 3, The Salt Lake No. 4, The Salt Lake No. 5, The Yellow Jacket, The John John, The Reona, The Lucy, The Midas, The Evening Star, The Copper Queen.

The work was done and performed at the request and expense of the Glasgow and Western Exploration Co., Ltd., the owners of said claims

Signed—(JOSEPH JUREY.)

Subscribed and sworn to before me this 26th day of December, 1908.

Signed—(H. E. DRISCOLL,
Notary Public).

RECORDED at the request of Jos. Jurey, Dec. 26th, A. D. 1908, at 30 minutes past 10 o'clock A. M., at page 111 of book I of Battle Mountain Mining District, Lander County, Nevada.

Signed—(H. R. LEMAIRE,
District Recorder.)

PROOF OF LABOR.
COPPER CANYON GROUP.

State of Nevada,
County of Lander,—ss.

Before the subscriber personally appeared, who being duly sworn says that at least fourteen hundred dollars worth of labor or improvements were performed or made upon John John, Salt Lake No. 1, Salt Lake No. 2, Salt Lake No. 3, Salt Lake No. 4, Salt Lake No. 5, Copper Queen, Reona, Lucy, Blue Jacket, Eagle, Yellow Jacket, Midas, Evening Star, situate in Battle Mtn. Mining District, County of Lander, State of Nevada, during the year ending December 31st. 1909.

Such expenditure was made by or at the expense of The Glasgow [805] and Western Exploration Co., Ltd., owners of said claims, for the purpose of holding said claims.

Signed—(JOSEPH JUREY.)

Subscribed and sworn to before me this 1st day of November A. D. 1909.

[Seal] Signed—(L. A. LEMAIRE,
Notary Public).

RECORDED at the request of Joseph Jurey, Nov. 1st, 1909, at 10 o'clock A. M., and recorded at page 235 of book I of records of the Battle Mountain District, Lander County, Nevada.

Signed—(H. R. LEMAIRE,
District Recorder.)

Sheet No. 4.

Signed—H. R. LEMAIRE.

NOTICE OF ASSESSMENT.

SALT LAKE No. 5.

Copper Canyon, Nev., Nov. 17th, 1906.

We, Joseph Jurey, Wm. T. Jurey, do this above mentioned date depose and swear that within the last sixty days we have done at least $100.00 worth of work (as assessment work) on the claim known as the Salt Lake No. 5, in the shape of cross-cutting to ledge Situated in Battle Mountain Mining District, Lander Co., Nevada.

JOSEPH JUREY,
WM. T. JUREY.

RECORDED at request of Joseph Jurey, Nov. 18th, 1906, at 10:30 o'clock A. M., at page 48 of book H, Battle Mountain Mining District, Lander County, Nevada.

H. R. LEMAIRE,
District Recorder.

NOTICE OF ASSESSMENT.

SALT LAKE No. 4.

We, Joseph Jurey, Wm. T. Jurey, do this above mentioned date depose and swear that within the last sixty days we have done at least $100.00 worth of work (as assessment work) on the claim known as the Salt Lake No. 4, in the shape of driving tunnel on ledge. Situated in Battle Mountain Mining District, Lander County, Nevada. [806]

JOSEPH JUREY,
WM. T. JUREY.

RECORDED at request of Joseph Jurey, Nov. 18th, 1906, at 11 o'clock A. M. at page 48 of book H, Battle Mountain Mining District, Lander County, Nevada.

H. R. LEMAIRE,
District Recorder.

SALT LAKE No. 3.

NOTICE OF ASSESSMENT.

Copper Canyon, Nov. 17th, 1906.

We, Joseph Jurey, Wm. T. Jurey, do this above mentioned date depose and swear that within the last sixty days we have done at least $100.00 worth of work (as assessment work) on the claim known as Salt Lake No. 3, in the shape of repairing buildings, water pipes and drains. Situate in Battle Mountain Mining District, Lander County, Nevada.

JOSEPH JUREY,
WM. T. JUREY.

RECORDED at request of Joseph Jurey, Nov. 18th, 1906, at 11:30 o'clock A. M. at page 48 of book

H, Battle Mountain Mining District, Lander County, Nevada.

H. R. LEMAIRE,
Dist. Recorder.

SALT LAKE No. 2.

NOTICE OF ASSESSMENT.

Copper Canyon, Nov. 17th, 1906.

We, Joseph Jurey, Wm. T. Jurey, do this above mentioned date depose and swear that within the last sixty days we have done at least $100.00 worth of work (as assessment work) on the claim known as Salt Lake No. 2 in the shape of crosscutting, situated in Battle Mountain Mining District, Lander County, Nevada.

JOSEPH JUREY,
WM. T. JUREY.

RECORDED at request of Joseph Jurey, Nov. 18th, 1906, at 11:50 o'clock A. M. at page 49 of book H, Battle Mountain Mining District, Lander County, Nevada.

H. R. LEMAIRE,
District Recorder.

SALT LAKE No. 1.

NOTICE OF ASSESSMENT.

Copper Canyon, Nov. 17th, 1906.

We, Joseph Jurey, Wm. T. Jurey, do this above mentioned date depose [807] and swear that within the last sixty days we have done at least $100.00 worth of work (as assessment work) on the claim known as the Salt Lake No. 1 in the shape of

crosscutting, situated in Battle Mountain Mining District, Lander County, Nevada.

JOSEPH JUREY,
WM. T. JUREY.

RECORDED at the request of Joseph Jurey Nov. 18th, 1906, at 12 o'clock M., at page 49 of Book H, Battle Mountain Mining District, Lander County, Nevada.

H. R. LEMAIRE,
Dist. Recorder.

REONA.

NOTICE OF ASSESSMENT.

Copper Canyon, Nov. 17th, 1906.

We, Joseph Jurey, Wm. T. Jurey, do this above mentioned date depose and swear that within the last sixty days we have done at least $100.00 worth of work (as assessment work) on the claim known as the Reona in the shape of driving tunnel on ledge, situated in Battle Mountain Mining District, Lander County, Nevada.

JOSEPH JUREY,
WM. T. JUREY.

RECORDED at the request of Joseph Jurey Nov. 18th, 1906, at 12:10 o'clock P. M. at page 49 of book H, Battle Mountain Mining District, Lander County, Nevada.

H. R. LEMAIRE,
District Recorder. [808]

**Defendant's Exhibit No. 48—Affidavit of H. R. Lemaire.**

VERIFICATION.

County of Lander,
State of Nevada,—ss.

H. R. Lemaire, being duly sworn, deposes and says: That he is H. R. Lemaire, the duly qualified, authorized and acting District Recorder of Battle Mountain Mining District, County and State aforesaid; that as such Recorder he has the charge and custody of the mining records of his office, and that the within annexed sheets, each of which, for the purposes of identification and description has been signed at the top thereof with his sign manual, and in and by his own hand, and numbered as hereinafter described, are full, true and correct copies of the pages of said mining records therein enumerated.

Said within annexed sheets, being three in number, are marked respectively, Sheet No. 1; Sheet No. 2; Sheet No. 3;

And this affiant further deposes that he has in person carefully read and examined the three within annexed sheets, and that he has carefully compared them and the contents thereof with the official records of his office, and that they are full, true, complete and verbatim copies of said records, as entered therein on the respective pages in the within annexed sheets enumerated.

The foregoing verification of said copies is hereby made and subscribed to by me under my seal of

office, at Battle Mountain, Nevada, this 24th day of May, A. D. 1915.

[Seal] H. R. LEMAIRE,
District Recorder.

Subscribed and sworn to before me this 24th day of May, 1915.

[Seal] FRANK J. KINGHORN,
Notary Public.

My commission expires February 10, 1919. [809]

Sheet No. 1.

Signed H. R. LEMAIRE.

For the purpose merely of more particularly describing the location or situation of the Salt Lake No. 3 lode mining claim, located on February 2d, 1897, by J. H. Cline in Battle Mountain mining district, Lander County, Nevada, the location notice of which is of record in Book F at page 39 records of said mining district and in the office of the County Recorder of said county; and without waiving or intending to waive any of the rights acquired by the locator of said claim and held by the undersigned under and by virtue of the location of said claim, but for the purpose of better perfecting such rights, I, the undersigned, the present owner of said claim, hereby give notice and state that said claim as located is situated in Copper Canyon at and around the houses that formerly belonged to the old and new Battle Mountain Mining companies.

Dated December 24, 1897.

J. H. CLINE,
Owner of Said Claim.

Filed and recorded this 31st day of Decr., 1897.

JOHN MELANDER,

Dist. Recorder.

By F. E. Chagnon,

Clerk.

Copper Canyon, Lander County, Nevada,

Dec. 21, 1898.

I, J. N. Hicks, do this above mentioned date depose and swear that I have done one hundred dollars worth of work (as assessment work, on the claim known as the Salt Lake No. 3, located in Battle Mountain Mining District, Lander County, Nevada, in the shape of digging pipe line, and laying water pipe for carrying water to the mine; digging sewer about 75 feet long and boxing same with lumber 6 in. by 6 in. by 70 feet long for carrying waste, shingling houses, putting in floors, windows and repairing buildings, &c., to the amount of at least one hundred & twenty-five dollars, during the latter part of the year ending Dec. 31st, 1898.

J. N. HICKS. [810]

State of Nevada,
County of Lander,—ss.

On this 21st day of December, A. D. one thousand eight hundred and ninety-eight, before me, H. S. Starrett, a notary public of the State of Nevada, in and for said Lander County, Nevada, personally appeared J. N. Hicks, known to me to be the person described in and (and) who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the

uses and purposes therein mentioned. H. S. Starrett, Notary Public, Lander County, Nevada. In witness whereof I have hereunto set my hand and affixed the seal of my said office in the town of Battle Mountain, the day and year last above written.

H. S. STARRETT,
Notary Public, Lander County, Nevada.

RECORDED at the request of Joseph Jurey January 26th, 1904, at 27 minutes past 8 o'clock P. M. in book G at page 373, Battle Mountain Mining District, Lander County, State of Nevada.

C. S. MELLANDER,
District Recorder.

Copper Canyon, Nevada, Sept. 2, 1899.

We, Wm. Jurey, Jos. Jurey, Ed. Uren, C. A. Finn and Jno. Sadins do this above mentioned date depose and swear that within the last sixty days we have done at least $100.00 worth of work (assessment work) on the claim known as the Salt Lake No. 3 in the shape of repairs on water pipes, buildings and water drains situated in Battle Mountain Mining District, Lander County, Nev.

WM. JUREY,
Per C. A. F.
JOSEPH JUREY,
ED. UREN,
C. A. FINN,
J. H. SADINS.

Witness:
WM. JUREY,
Per. C. A. F. [811]

State of Nevada,
County of Lander,—ss.

On this 2d day of Sept., A. D. one thousand eight hundred and ninety-nine, before me, H. S. Starrett, a Notary Public of the State of Nevada, in and for said Lander County, Nevada, personally appeared Wm. Jurey, Jos. Jurey, Ed. Uren, C. A. Finn and J. H. Sadins, known to me to be the persons described in and who executed the foregoing instrument, who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned. H. S. Starrett, Notary Public, Lander County, Nevada. In witness whereof, I have hereunto set my hand and affixed the seal of my said office at Battle Mountain, Nevada, the day and year last above written.

H. S. STARRETT,
Notary Public, Lander County, Nevada.

Recorded at the request of Joseph Jurey Jan. 27th, 1904, at 6 o'clock P. M. in book G, at page 378, Battle Sheet No. 2.

Signed H. R. LEMAIRE.

Mountain Mining District, Lander County, State of Nevada.

C. S. MELLANDER,
District Recorder.

Copper Canyon, Dec. 29th, 1900.

We, William Jurey, Joseph Jurey, do this above mentioned date depose and swear that within the last sixty days we have done at least $100.00 worth of work (as assessment work) on the claim known

as the Salt Lake No. 3 in the shape of repairs on water pipes, buildings and water drain situated in Battle Mntn. Mining Dist., Lander County, Nev.

WILLIAM JUREY,
JOSEPH JUREY.

Subscribed and sworn to before me this the 29th day of December, A. D. 1900, Battle Mountain, Nev.

[Seal] T. E. HAGAR,
Notary Public.

RECORDED at the request of Joseph Jurey, January 28, at 3:30 [812] P. M. in book G at page 385, Battle Mountain Mining District, Lander County, Nev.

C. F. MELLANDER,
District Recorder.

Copper Canyon, Nev., Dec. 14, 1901.

We, William Jurey, Joseph Jurey, do this above mentioned date depose and swear that within the last sixty days we have done at least $100.00 worth of work (as assessment work) on the claim known as the Salt Lake No. 3 in the shape of repairs on water pipes, buildings and water drain situate in Battle Mountain Mining District, Lander County, Nevada.

WILLIAM JUREY.
JOSEPH JUREY.

Subscribed and sworn to before me this 17th day of December, 1901.

[Seal] F. E. HAGAR,
Notary Public.

RECORDED at the request of Joseph Jurey, Jan. 29th, 1904, at 6:55 o'clock P. M. in book G at page 389, Battle Mtn. Mining Dist., Lander Co., Nevada.

C. F. MELLANDER,
District Recorder.

Copper Canyon, Nev., Nov. 21st, 1902.

William Jurey, Joseph Jurey, do this above mentioned date depose and swear that within the last sixty days we have done at least $100.00 worth of work (as assessment work) on the claim known as the Salt Lake No. 3, in the shape of repairing water pipes, buildings and water drain, situated in Battle Mountain Mining District, Lander County, Nevada.

WM. JUREY.
JOSEPH JUREY.

Subscribed and sworn to before me this 20th day of December, 1902.

[Seal]

L. A. LEMAIRE,
Notary Public.

RECORDED at the request of Joseph Jurey Jan. 29th, 1904, at 8 o'clock A. M. in book G at page 391, Battle Mtn. Mining Dist., Lander C., Nevada.

C. F. MELLANDER,
District Recorder. [813]

Copper Canyon, Nevada, Dec. 10th, 1903.

We, William Jurey, Joseph Jurey, do this above-mentioned date depose and swear that within the last sixty days we have done at least $100.00, one hundred dollars worth of work (as assessment work) on the claim known as the Salt Lake No. 3 in the shape of repairing water-pipes, buildings and water

drain, situated in Battle Mountain Mining District, Lander County, Nevada.

WILLIAM JUREY,
By W. T. J.
JOSEPH JUREY.

Subscribed and sworn to before me the 23 of December.

WM. NORRIS,
Justice of the Peace of Argenta township.

RECORDED at the request of Joseph Jurey, Jan. 30th, 1904, at 3:20 o'clock P. M., in book G at page 394, Battle Mtn. Mining Dist., Lander County, Nevada.

C. F. MELLANDER,
District Recorder.

Sheet No. 3.

Signed H. R. LEMAIRE.

Copper Canyon, Nev., Dec. 10th, 1904.

We, Joseph Jurey and Wm. T. Jurey do this above-mentioned date depose and swear that within the last sixty days we have done at least $100.00 worth of work (as assessment work) on the claim known as the Salt Lake No. 3 in the shape of repairs on water pipe, buildings, and water drain, situated in Battle Mtn. Mining Dist., Lander County, Nevada.

JOSEPH JUREY.
WM. T. JUREY.

RECORDED at the request of Joseph Jurey, December 15th, 1904, at 6:20 o'clock P. M., in book G, at page 405, Battle Mtn. Mining Dist., Lander Co., Nevada.

C. F. MELLANDER,
District Recorder.

Copper Canyon, Nev., Nov. 29th, 1905.

We, Joseph Jurey, Wm. T. Jurey, do the abovementioned date depose and swear that within the last sixty days we have done at least $100.00 worth of work (as assessment work) on the claim known as the Salt Lake No. 3, in the shape of repairs on water [814] pipes, buildings and water drains, situated in Battle Mountain Mining Dist., Lander County, Nev.

JOSEPH JUREY.
WM. T. JUREY.

RECORDED at the request of Joseph Jurey November 30th, 1905, at 50 minues past 5 o'clock P. M., in book G at page 419, Battle Mountain Mining District, Lander County, State of Nevada.

C. F. MELLANDER,
District Recorder.

NOTICE OF ASSESSMENT.

Salt Lake No. 3, Copper Canyon, Nov. 17th, 1906.

We, Joseph Jurey, Wm. T. Jurey, do this abovementioned date depose and swear that within the last sixty days we have done at least $100.00 worth of work (as assessment work) on the claim known as Salt Lake No. 3, in the shape of repairing buildings, water pipes and drains, situated in Battle Mountain Mining District, Lander County, Nevada.

JOSEPH JUREY.
WM. T. JUREY.

RECORDED at the request of Joseph Jurey, Nov. 18th, 1906, at 11:30 o'clock A. M., at page 48 of book

H, Battle *Mining* Mining District, Lander County, Nevada.

H. R. LEMAIRE,
Dist. Recorder. [815]

**Testimony of Robert L. Phillips, for Plaintiffs (Recalled).**

Mr. ROBERT L. PHILLIPS, called for further examination by plaintiffs, testified as follows:

Mr. THATCHER.—(Q.) Where was your sample number 1 taken?

A. It was taken out of shaft number 1.

Q. Where was sample number 3 taken?

A. Out of cut number 2.

Q. Sample number 3 was taken out of cut number 2? A. Yes.

(The assay certificates are admitted in evidence, marked Plaintiffs' Exhibits "A-14" and "A-15," and read as follows:) [816]

**Plaintiffs' Exhibit "A-14"—Assay Certificate (Phillips Samples).**

ORE ASSAY REPORT OF CARSON ASSAY OFFICE.

Carson City, Nevada.

The one ore sample left for Assay by Mr. George Thatcher, Carson City, Nev., at the Carson Assay Office, May 24th, 1915, result as follows:

| Assay No. | Depositor's Mark. | Gold. Oz. | Silver. Oz. |
|---|---|---|---|
| 1043. | Ore Sample No. 1–<br>S. L. #3. | Tr. | Tr. |
| | | Gold. | Silver. Value Per Ton. |
| | | Trace. | Trace. Trace. |

Gold at $20.67 per oz.

Silver at ..... per oz.

W. O. WOODBURY,
Assayer.

## ORE ASSAY REPORT OF CARSON ASSAY OFFICE.

Carson City, Nevada.

The one ore Sample left for assay by Mr. George Thatcher, Carson City, Nevada, at the Carson Assay Office, May 18th, 1915, result as follows:

| Assay No. | Depositor's Mark. | Gold. Oz. Per Ton. | Silver. Oz. Per Ton. | Copper. Per Cent. |
|---|---|---|---|---|
| 1028. | Ore Sample No. 1– S. L. #3. | 0.04 | 1.04 | 0 |
| | | Gold. | Silver. | Value Per Ton. |
| | | .82 | .52 | $1.34 |

Gold at $20.67 per oz.
Silver at 50¢ per oz.

W. O. WOODBURY,
Assayer.

## ORE ASSAY REPORT OF CARSON ASSAY OFFICE.

Carson City, Nevada.

The one Ore Sample left for Assay by Mr. George Thatcher, Carson City, Nev., at the Carson Assay Office, May 18th, 1915, result as follows:

| Assay No. | Depositor's Mark. | Gold. Oz. Per Ton. | Silver. Oz. Per Ton. | Copper. Per Cent. |
|---|---|---|---|---|
| 1030. | Ore Sample No. 3– S. L. #3. | Tr. | Tr. | 0 |
| | | Gold. | Silver. | Value Per Ton. |
| | | Trace. | Trace. | Trace. |

Gold at $20.67 per oz.
Silver at ..... per oz.

W. O. WOODBURY,
Assayer. [817]

**Plaintiffs' Exhibit "A-15"—Assay Certificate (Phillips Samples).**

**ORE ASSAY REPORT OF CARSON ASSAY OFFICE.**

**Carson City, Nevada.**

The 1 Ore sample left for Assay by J. Healey at the Carson Assay Office, Dec. 2, 1913, result as follow:

| Assay No. | Depositor's Mark. | Gold. | Silver. | Value Per Ton. |
|---|---|---|---|---|
| 279 | Sample No. 1 | No. | No. | No. |
| 280 | Sample No. 2 | 0 | 0 | 0 |
| 281 | Sample No. 3 | 0 | 0 | 0 |
| 282 | Sample No. 4 | 0 | 0 | 0 |
| 283 | Sample No. 5 | 0 | 0 | 0 |
| 284 | Sample No. 6 | .41 | .82 | $1.23 |
| | Silver 60¢ | | | |

W. O. WOODBURY,
Assayer.

JUROR.—(Q.) Can you tell where Governor Boyle's were taken, and what year?

Mr. THATCHER.—They were taken previous to the last trial, in 1913.

JUROR.—Were they taken before the placer claim was located?

Mr. THATCHER.—No, they were taken afterward, but from exposures then on the ground which had had not been at that time changed.

(The assay certificates admitted in evidence are read to the jury.)

Mr. THATCHER.—If the Court please, the mineral affidavit of ground, I don't know whether that was actually in evidence.

Mr. SPRINGMEYER.—I think it was. Didn't we object to that?

Mr. THATCHER.—I cross-examined, and asked about the formation, I don't think you made any objection.

Mr. SPRINGMEYER.—Well, I don't think it matters everything you can avail yourself of, we will admit it. [818]

(The Sheriff's Certificate of Sale heretofore offered by plaintiffs is admitted in evidence, marked Plaintiffs' Exhibit "A–16," and reads as follows:)

**Plaintiffs' Exhibit "A–16"—Sheriff's Certificate of Sale.**

*"In the Sixth Judicial District Court of the State of Nevada, in and for the County of Humboldt.*

VERDI LUMBER COMPANY, a Corporation,
Plaintiff,

vs.

MURRAY SCOTT,
Defendant.

I, Bar Francis, Sheriff of the County of Lander, do hereby certify that by virtue of an execution in the above-entitled case, attested the 3d day of June, 1914, by which I was commanded to make the amount of $310.76 dollars, to satisfy the judgment in said action with costs and interest thereon, out of the personal property of Murray Scott, the above defendant, and if sufficient personal property could not be found, then out of the real property belonging to the said Murray Scott on the 6th day of July, A. D. 1914, or at any time thereafter, as by the said writ, reference being thereunto had, more fully appears; I levied on and sold on July 6th, 1914, at public auction, ac-

cording to the statute in such cases made and provided, to Verdi Lumber Company, who was the highest bidder, for the sum of $310.76, which was the whole price paid by him for the right, title and interest of said defendant, of in and to the real estate described as follows, to wit:

All the right, title, claim and interest of the said Murray Scott in and to that certain mining claim, situated in Battle Mountain Mining District, County of Lander, State of Nevada, and known, called and designated as Homestake Placer Mining Claim, said mining claim being more particularly described in the Certificate [819] of Location recorded in the office of the County Recorder of Lander County, Nevada, in Book 8, at page 57, Duplicate Mining Notices, records of Lander County, Nevada, to which records, books and pages, reference is hereby made. And that the said real estate is subject to redemption pursuant to the statute, in such cases made and provided.

Dated in Austin, this 8th day of December, 1914.

BAR FRANCIS,

Sheriff of Lander County, Nevada.

In consideration of the sum of Three Hundred and Forty-five and 00.100 Dollars, to it in hand paid by Frank L. Reber, the receipt whereof is hereby acknowledged, the Verdi Lumber Company, a corporation, by its duly authorized agent, does by these presents bargain, sell, assign and set over unto the said Frank L. Reber, of the County of Humboldt, State of Nevada, his heirs and assigns, the within certificate of sale and all its right, title, interest, estate,

claim, property, and demand of, in and to the certain mining claim described in the said certificate of sale, which the said Verdi Lumber Company now has by virtue of the sale of said property to it on the 6th day of July, 1914, by the Sheriff of the County of Lander, State of Nevada; subject, nevertheless, to the right of redemption as provided in said certificate of sale.

IN WITNESS WHEREOF, the said Verdi Lumber Company, by its duly authorized agent, has hereunto affixed its hand and seal the 5th day of January, A. D. 1915.

VERDI LUMBER COMPANY, (Seal)

[Seal] By C. D. TERWILLIGER,

Secretary.

(Fifty Cents Revenue Stamps.) [820]

State of Nevada,
County of Humboldt,—ss.

On this 6th day of January, A. D. 1915, personally appeared before me, J. A. Langwith, a Notary Public in and for the County of Humboldt, C. D. Terwilliger, known to me to be the Secretary of the Verdi Lumber Company, the corporation that executed the foregoing instrument, and upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated; and that the said corporation executed the said instrument freely

and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in the County of Humboldt, the day and year in this certificate first above written.

[Seal] J. A. LANGWITH,
Notary Public in and for the County of Humboldt, State of Nevada. [821]

The COURT.—There is another matter in regard to the assessment work: I am inclined to allow you to put in testimony showing the value of the work done on the road, in so far as it was an exposure of the veins; in so far as it is merely a road, and nothing else, I don't think it should go in.

**Testimony of Parker Liddell, for Defendant (Recalled).**

Mr. PARKER LIDDELL, called for further examination by defendant, testified as follows:

Mr. SPRINGMEYER.—(Q.) Please state, in your opinion, Mr. Liddell, whether the work on the road on Salt Lake No. 3 claim, in the vicinity of point 9 on Defendant's Exhibit No. 5, exposing many veins, fractures, or veinlets, is worth at least one hundred dollars? A. It is.

Q. You say it is? A. It is, yes.

Q. You have examined the road, of course?

A. Yes, I have examined the road.

Q. You know in what sort of material the work is done?

A. Well, the road was blasted out of hard rock for at least quite a distance.

(Testimony of Parker Liddell.)

Q. At the point where the veins are exposed, about how deep is the solid rock or country formation?

A. Well, making the excavation for the road, the formation of rock in place is exposed for I should judge three and a half feet at least, that is the vertical elevation of that.

Q. Is that on an average?

A. Some places more, and perhaps some places not quite so much, but in that vicinity I should say at least that much.

Q. As to the excavation for the mill, where the vein at point 21 on Defendant's Exhibit No. 5 is exposed, state whether that work— [822]

Mr. THATCHER.—Just a minute. There is no testimony here showing that the mill contributed to the value of the claims, or the assessment work.

Mr. SPRINGMEYER.—I am not saying that the mill did; I mean the place where the vein was exposed back of the mill.

The COURT.—I will allow that, too, but it is simply the value of the work to expose that particular vein. The work, in my judgment, was never done for that purpose. You made those excavations for the mill, and not to develop the claim, so the value you would be allowed for this purpose would be simply the value of the particular hole that exposed that vein. And the same thing along the line of the road; the road was not, in my judgment, built for the development of this claim; it was built in order to reach the mill, and it must, as a road, be considered just as the mill is considered; but where there is an

(Testimony of Parker Liddell.)

exposure of a vein, I think the testimony should be allowed as to the value of that work, for just the exposure of those veins, if there be veins, or whatever they are, as assessment work.

Mr. SPRINGMEYER.—(Q.) What is the value of the work exposing the vein on Salt Lake No. 3 at point 21, being back of the mill, the minimum value, in your opinion?

A. Well, I should judge as actual mining work it is easily of a value of a hundred dollars.

Mr. SPRINGMEYER.—That is all.

Cross-examination.

Mr. THATCHER.—(Q.) How many veins are exposed on the road?

A. I don't know how many were.

Q. How long were they exposed?

A. Well, a horizontal distance of at least five or six feet, and a vertical distance of two or three—two to four feet. [823]

Q. Five or six feet one way and two or three the other? And how wide—one inch wide?

A. Whatever the width of the vein happened to be.

Q. Whatever the width of the vein was; and you think those were worth a hundred dollars, do you?

A. I should undoubtedly assert that the value of the road as mining work was worth at least a hundred dollars.

Q. I didn't ask you that; I asked you what was the value of the work, so much as exposed the vein?

A. That is what I mean, the portion of the road

(Testimony of Parker Liddell.)

that actually exposed the vein was worth at least a hundred dollars.

Q. Not the portion that exposed the vein, but so much as did actually take the vein itself, the cross-section of it.

A. There are a number of veins there; combining the total value that exposes the different veins, it was easily worth a hundred dollars.

Q. You mean veins and veinlets, too, is that it?

A. Well, veinlets are undoubtedly exposed.

Q. You think they are exposed, too; now, this one under the mill, how long was that exposed?

A. The face of the cut.

Q. How much of the vein is exposed in the face of the cut, how high?

A. It is about nine feet, I think.

Q. About nine feet high? A. I should judge so.

Q. How wide?

A. Well, the portion of the face necessary to expose the vein at the point was—

Q. Well, how wide was the vein exposed—how wide was this vein itself?

A. The sample I took was over thirty-two inches, I believe.

Q. Was that all vein matter? A. I think it was.

Q. Nine feet high and thirty-two inches wide, how long was it exposed?

A. Yes, but the vein cuts across diagonally, you [824] could not expose the total amount of vein in that face without taking a full width which would correspond to the diagonal line of the vein across

(Testimony of Parker Liddell.)

the face; now, it happens that this face does not actually cut that vein on the plane at right angles to the direction of that vein.

Q. What is the course of that vein, Mr. Liddell?

A. I could not say exactly; it is northerly and southerly.

Q. About northerly and southerly?

A. As I remember it, it is, yes.

Q. What way does the excavation for the mill run?

A. The excavation for the mill runs northeasterly, and the actual face exposed runs northwesterly.

Q. And you can see a nine-foot face on that vein and thirty-two inches wide?

A. Well, the face is more than thirty-two inches wide—the face of the cut is more than thirty-two inches wide.

Q. I mean the vein, I am talking about the vein.

A. I want to explain the actual width I represent by my sample is supposed to be the actual least width of the vein; if the vein pitches into the rock, and you cut that, the cut at any angle—the exposed face, does not truly and accurately represent the width of the vein.

Q. Well, how much of it was exposed by this cut—how long?

A. I could not say, it must have been quite a few feet.

Q. Well, there must have been, but how much did you see?

A. I did not examine the vein on the floor of the cut.

(Testimony of Parker Liddell.)

Q. You didn't examine the vein on the floor of the cut, you saw it in the face nine feet high?

A. I should say the face was approximately that.

Q. But you didn't see it on the floor, and don't know how long it was?

A. I didn't examine the floor of the cut for it at all.

Mr. THATCHER.—That is all. [825]

**Testimony of Benjamin F. Tibby, for Defendant (Recalled).**

Mr. BENJAMIN F. TIBBY, recalled for further examination, testified as follows:

Mr. SPRINGMEYER.—(Q.) State, in your opinion, whether or not the reasonable value of the work in exposing the vein you have testified to back of the mill was at least one hundred dollars.

A. Well, from the nature of the slope of the hill at the mill, in order to dig a trench following that vein along until it had a face equivalent to the present one, I estimate it would be about that.

Q. State whether or not, in your opinion, the reasonable value of exposing the veins on the road leading to the mill on the Salt Lake No. 3 was at least one hundred dollars. A. I would think so, yes, sir.

Q. You made examinations at both those points at the time you made the report and took the samples you testified to heretofore? A. Yes, sir.

Mr. SPRINGMEYER.—That is all.

Mr. THATCHER.—That is all.

Mr. SPRINGMEYER.—That is all we have, your Honor. That closes our case.

Mr. THATCHER.—That is all. That closes ours.

(The Court admonishes the jury and at 12 o'clock a recess is taken until 2 o'clock P. M.) [826]

AFTER RECESS—1:30 P. M.

(All parties present.)

The COURT.—Gentlemen, I cannot go over the instructions in advance for you, but I will give you a few of my conclusions in brief. In the first place, I don't think there is any adverse possession in the case, so the instructions based on adverse possession will not be given; I exclude them, not because they do not correctly state the law, but simply because I regard them as unnecessary. The instructions with reference to assessment work will be eliminated with this statement: The plaintiffs have tendered no issue as to the performance of the assessment work, therefore they cannot recover in this case solely on the ground that there was a failure to perform the assessment work. I understand that meets with the approval of both sides?

Mr. THATCHER.—Yes, sir.

Mr. ELLIS.—Yes, sir. [827]

Thereupon, at the close of the evidence, plaintiffs requested the Court to give to the jury the following instructions:

**Plaintiffs' Requested Instructions.**

The jury is instructed that the laws of the United States require as one of the essential conditions to the making of a valid location of unappropriated public lands of the United States under the mining laws a discovery of mineral within the limits

of the claim, and the exclusive right of possession is conferred only on one who has made a valid location, one of the essentials of which is a valid discovery. Prior to such discovery mineral land is in law vacant and open to exploration and location, subject to the rule that no prospector is authorized by any form of forcible, fraudulent, surreptitious or clandestine conduct to enter or intrude upon the actual possession of another prospector; for every miner upon the public domain is entitled to hold the place in which he is working against all others having no better right. The actual possession of the prior arrival will be protected to the extent needed to give him room for work and to prevent probable breaches of the peace; but while he is thus protected his possession must yield to the actual location on a valid discovery made by one who has located peaceably, and neither clandestinely nor with fraudulent purposes. The right of possession to a claim marked on the ground comes only from a valid location. Parties may not go on the public domain and acquire the exclusive right of possession by the mere performance of acts prescribed for location in the absence of an actual discovery.

The Court instructs the jury that a competent person may go upon the public domain of the United States with the *bona fide* intention of making a discovery of mineral and may define the [828] boundaries of his claim by means of notices and monuments thereon, and so long as such locator is in the actual possession of his location so defined endeavoring to make a discovery, he will be entitled to the peace-

able possession of such claim as against one entering thereon as a trespasser, but in the absence of a discovery should he permit another competent person to go peaceably upon the claim and should such person make a valid discovery of mineral and locate the same and in all things comply with the requirements as to monumenting, posting notice and recorddation, then such subsequent locator would acquire the title to such claim so located subject only to the paramount title of the United States.

The jury are instructed that to constitute a valid discovery upon a lode mining claim three elements are necessary: There must be a vein or lode of quartz or other rock in place; the quartz or other rock in place must carry gold or some other valuable mineral deposit; and the two preceding elements, when taken together, must be such as to justify a prudent man in the expenditure of his time and money in the effort to develop a valuable mine. You are therefore instructed that, even though you may believe and find from the evidence that the grantors of defendant made a discovery of a vein or lode on the Salt Lake No. 3, the Midas and the Evening Star lode claims, yet if you further believe and find from the evidence that such veins or lodes so discovered did not carry gold or some other valuable mineral deposit as to justify a prudent man in the expenditure of his time and money in the effort to develop a mine, then you will find the issue in favor of the plaintiffs.

You are instructed that it is not sufficient to constitute a discovery within the meaning of the requirements of the law concerning [829] lode claims that

the locator would be willing to expend his time and money in developing it. Willingness, unless evidenced and followed by actual exploitation, would be a mere mental state which could not be satisfactorily proved. The facts which are within the observation of the discovery and which induced him to locate should be such that would justify a man of ordinary prudence, not necessarily a skilled miner, in the expenditure of his time and money in the development of the property.

You are instructed that this is not a contest between mining claimants both claiming to be the first locators or the first to discover mineral in place on the same lode. This is a contest between mineral claimants on one side claiming a lode and placer claimants on the other claiming the ground as placer. In such cases it is not sufficient for the lode claimant or locator of the lode claim to show that the lands do in fact contain mineral or valuable mineral when the placer claims were located, but he must show at that time that the lode claim contained mineral of such an extent and value as to justify expenditures for the purpose of extracting them, and if the lands are not known at that time to be so valuable for mining purposes, the fact that they are afterwards discovered to be valuable for such purposes does not defeat or impair the title of the persons claiming under the placer locations. It is not denied in this case that the plaintiffs made a discovery of placer within the meaning of the law or that they have failed to properly monument their claims or perform the work required by law. The only contention of

the defendant being that they are prior in point of time and made a prior valid discovery of mineral-bearing rock in place. [830]

The locators of the placer claims, the Guy Davis and Homestake placers, have each performed all of the acts necessary and required by the statutes of the United States and the laws of the State of Nevada in the discovery and location of a placer claim. If you find from the evidence and the instructions of the Court that no valid location has been made of the Salt Lake No. 3 your verdict must be for the plaintiffs as to the Guy Davis placer. If you find from the evidence and the instruction of the Court that no valid location was made on the Midas and Evening Star lodes, your verdict must be for the plaintiffs for the Homestake placer.

I instruct you that in order to constitute a valid location on the Midas and Evening Star lode claims it was necessary for the defendant, or his predecessors in interest, in this action to make a discovery within the boundaries of each claim and to post at the point of discovery a notice of such location, which notice must contain the name of the lode or claim, the name of the locator or locators, the date of location, the number of linear feet claimed in length along the course of the vein each way from the point of discovery with the width on each side of the center of the vein, and the general course of the vein or lode as near as may be. The locator shall also before ninety days from the posting of his notice on the claim sink a discovery shaft on the claim located to a depth of at least ten feet from the lowest part of

the rim of such shaft at the surface or deeper if necessary to show by such work a lode deposit of mineral in place. A cut or cross-cut or tunnel, which cuts the lode at a depth of ten feet, or an open cut along the ledge or lode equivalent in size to a shaft four feet by six feet by ten feet is equivalent to a discovery shaft. The locator must define the boundaries of [831] his claim, but in this case there is no contention, and it is admitted that the boundaries were so defined. These acts of location are mandatory and must have been performed by the defendant or his grantors prior to the entry and location of the Homestake placer by the plaintiffs.

The jury are instructed that in order to constitute a valid location of the Salt Lake No. 3 the defendant in this case must have made a discovery of mineral-bearing rock in place, and must have posted at or in such reasonable proximity to the discovery to give notice to all comers what ledge is intended a notice, and monument and define the boundaries of said claim by monuments readily traceable on the ground. All these facts must have been performed by the defendant prior to the entry and location by the plaintiffs in this action.

If you believe and find from the evidence that the locators of the Salt Lake No. 3 at the time of the making of their alleged location erected a monument and posted a notice thereat claiming the discovery of a lode or vein, you are instructed that such notice and monument must have been placed upon the vein or lode so claimed or in reasonable proximity thereto.

The jury are instructed that if you believe and find

from the evidence that on or about March 22, 1914, defendant and one Brown located the ground in controversy as placer ground and posted notices of location thereon claiming the same as placer ground, you will take this fact, if the same be a fact, in considering whether or not valuable lodes exist on the Salt Lake No. 3, Midas and Evening Star lode claims and whether or not such a discovery was made as required and defined in these instructions. [832]

You are further instructed that the mere watching of the ground in absence of diligent co-operation towards a discovery will not suffice, for it is not the intention of the law to permit the mere occupant of mineral land to hold it against the world without doing any development work therein.

The jury are instructed that if you believe from the evidence that any witness has wilfully sworn falsely on this trial as to any matter or thing material to the issues in the case, then you are at liberty to disregard his entire testimony except so far as it has been corroborated by other credible evidence or by facts and circumstances proved on the trial.

[833]

Thereupon, at the close of the evidence, defendant requested the Court to give to the jury the following instructions:

**Defendant's Requested Instructions.**

The Court instructs the jury to find a verdict herein in favor of the defendant.

If you believe from the evidence: That William T. Jurey and Joseph Jurey on March 27, 1907, were citizens of the United States over the age of twenty-

one years; that on said date they made a discovery either of a mineral-bearing vein or of mineral-bearing rock in place on unoccupied and unappropriated public land and on the ground described as Midas claim and a similar discovery on the ground described as Evening Star claim; that on the date stated they placed certificates of location at or near the discovery points on each of the claims, and there built discovery monuments of rock and dirt about four feet high and four feet across; that on the same day they erected wooden location posts 4x4 inches in thickness and four feet high at the centers of the side lines and end lines and at the corners and end lines of the claims and within ninety days thereafter made a cut ten feet deep, ten feet long and six feet wide on the Midas claim, and a cut twenty feet long, ten feet wide and ten feet deep on the Evening Star claim; that on March 27, 1907, in good faith they erected wooden location posts 4x4 inches in thickness and four feet high at the centers of the side lines and end lines and at the corners of the end lines and side lines of the claim; that on June 21, 1907, they recorded certificates of location of the claims in the office of the county record of Lander County, Nevada; that at least one hundred dollars' worth of labor or improvements was performed on each of the claims either in 1912 or in 1913 prior to the location of the Homestake placer; and [834] that the defendant, on August 1, 1914, was and now is, a citizen of the United States and the owner of all the right, title and interest of William T. Jurey and Joseph Jurey and their grantees in and to the said claims, then your general

verdict should be for the defendant as to the said Midas and Evening Star lode mining claims.

If you believe from the evidence, that J. H. Clive, on February 2, 1897, was a citizen of the United States over the age of twenty-one years; that on said date, for him, a discovery either of a mineral-bearing vein or of mineral-bearing rock in place was made on unoccupied and unappropriated public land and on the ground described as Salt Lake No. 3 claim; that on the date stated the locators placed a notice of location at or near the discovery point, and there built a discovery monument of rock about four feet high and four feet across; that the locators on the same day in good faith erected wooden location posts 4x4 inches in thickness and four feet high at the centers of the side lines and end lines and at the corners of the end lines and side lines of the claim; that on February 5, 1897, J. H. Clive recorded the notice of location in the office of the district recorder of Battle Mountain Mining District, Battle Mountain, Nevada, and on February 8, 1897, recorded it in the office of the county recorder of Lander County, Nevada; that at least one hundred dollars worth of labor or improvements was performed on the claim either in 1912 or in 1913 prior to the location of the Guy Davis placer claim; and that the defendant on August 1, 1914, was, and now is, a citizen of the United States and the owner of all the right, title and interest of J. H. Clive and his grantees in and to the Salt Lake No. 3 claim, then your general verdict should be for the defendant as to said Salt Lake No. 3 Lode Mining Claim. [835]

The Court instructs the jury that the evidence on the part of the defendant to the effect that in locating the three lode mining claims, Salt Lake No. 3, Midas and Evening Star, the discovery monuments were properly built or posted on each of said claims, by the locator or locators thereof, that the notices of location were properly posted in the discovery monuments; that the boundary monuments were properly erected, and that the notice or certificate of location of said claims were each duly recorded, and all within the time allowed by law, and that said claims are each of lawful size, is not disputed by the plaintiffs' evidence, wherefore, upon these points you should find for the defendant.

The Court instructs the jury that during 1897 and for some years later, the law did not require any location work, such as the sinking of a shaft, adit or open cut, or other work upon a lode mining claim at or near the point of discovery, and the location of the Salt Lake No. 3 is unaffected by any such requirement; but in 1907 the law required location work to be performed at the point of discovery in the form of a shaft or cut at least ten feet by six feet by four feet upon or along the vein or lode, which requirement affected locations made during that year and afterwards.

The Court instructs the jury that proof of two years open, adverse, continuous and exclusive possession of lode mining lands under claim of right by claimant, as a lode mining location, and during such time working the same in the usual and customary way of working such mining claims in the vicinity thereof, has

all the force and effect, and is the full legal equivalent of all the acts and things necessary to be done to initiate a valid location of such lode mining claim and, if you find from the evidence in [836] this case or these cases, that the defendant and his predecessors had been so in adverse possession of the Salt Lake No. 3, Midas and Evening Star lode mining claim, or either thereof, for such period of two years at any time prior to the attempted locations of the Homestake and the Guy Davis placers, respectively, then defendant's grantor or grantors was a lawful locator by virtue of such adverse possession and working at the expiration of said period of two years, independent of any other act or acts of location.

When possession of property is proved to have once existed, the law presumes that it continues until the contrary is established by a preponderance of the evidence. Accordingly, if you believe that the grantors and predecessors in interest of defendant located and went into possession of the Salt Lake No. 3 lode claim on February 2, 1897, then you may find that defendant was in possession at the time plaintiffs or their grantors or predecessors in interest located the Guy Davis placer claim in 1913, unless the contrary be shown by the preponderance of the evidence.

The law presumes that the person in the rightful possession of property for the period required by the statute of limitations is the owner. The period of the statute of limitations for mining claims is two years. Hence, if you believe from the evidence that defendant and his grantors and predecessors in interest had the quiet, peaceable, open and uninterrupted posses-

sion of the Salt Lake No. 3 claim for the period of at least two years prior to the location of the Guy Davis placer claim by the plaintiffs or their grantors or predecessors in interest, and that said land contained a mineral-bearing lode or vein or rock in place, then your general verdict may be for the defendant. [837]

The Court instructs you that possession and working of a mining claim in the sense of the statute of limitations regarding adverse possession, is such working and using of the ground as is usual and customary with the owners of mining claims in the vicinity thereof, and does not mean that there must be actual and continuous work upon said claims every day or constant presence thereon every day during such period of two years, or that the work or improvements upon any such lode mining claim, shall exceed in value $100 during any one year. And the possession intended herein means such domination and control over the ground contained in such lode mining claims, as an owner of such property in the vicinity usually exercises and practices with respect to his own property and such as the nature of the property reasonably admits of. If you find from the evidence that the defendant and his grantors had been and were in such adverse possession of the lode mining claims involved in these actions for two continuous and consecutive years at any time prior to the plaintiffs' placer locations in 1913, the Court instructs you that valid lode mining locations were thereby effected, provided that mineral-bearing lode, ledge or rock in place was discovered by the owner of such lode loca-

tions prior to the initiation of any subsequent conflicting placer locations by plaintiffs or their predecessors. [838]

The Court instructs the jury that if it is not necessary to the exercise of lawful possession by the defendant and his grantors over the lode mining claims involved in this action, the Salt Lake No. 3, the Midas and the Evening Star, that they or their agent or employee, should reside or remain continuously upon each of said lode mining claims during all the time of such possession, but it is sufficient if the defendant or his grantors, his or their agent or employee, were in position to and did have such supervision, dominion or control over said mining claims as their nature admits of, and such as is usual and customary with the owners of like property in the vicinity thereof.

The Court instructs the jury that if you find from the evidence that the defendant and his grantors were in possession under valid locations of their lode mining claims involved in these actions, either by way of adverse possession and working for two years as herein elsewhere explained, or by virtue of a compliance with the laws for initiating such lode mining locations, that such possession relates to all the ground covered by and included within the exterior side lines and end lines of said locations as denoted by the boundary monuments upon the ground relating to each claim respectively, during all the time that such possession continued, and not to any less portion of said claim or claims.

The Court instructs the jury that in the matter of

the discovery of a lode, vein, or ledge, of mineral-bearing rock in place in a lode mining claim, it is sufficient if such formation [839] be found in a distinct channel or crevice, between walls of the general country rock an either side, and different in formation from such adjoining country rock. It is mineralized matter contained between two walls the value of which is greater than that which is contained in the adjoining country rock, and different in character. It is immaterial as to the width of such vein, ledge, lode or crevice containing such mineralized rock, or as to its comparative richness in mineral values at any particular point upon the surface or depth of such vein. So long as such mineral-bearing rock or lode carries values, it is sufficient, and it is immaterial whether such values be or assay high or low, or that some miners or mining men would not locate or develop such vein as a mining claim. It is sufficient if any reasonably prudent man might locate or develop the same as a mining claim, in the expectation of finding paying values.

If such lode or vein vary in width or thickness, or in the degree of concentration of values, from point to point upon the surface, or in its dip below the surface, then it is for the decision of each locator of a lode mining claim, to determine the extent to which he will locate, follow or develop such lode or vein or mineral-bearing rock in place, and the law will not supervise his judgment and decision in that respect.

The Court instructs the jury that the following are true legal definitions of terms used in the evidence in this case, viz.:

ROCK IN PLACE, means rock which is a part of a solid formation, that is, rock which is not movable without being detached from its parent body. Hardness is not a factor.

ROCK NOT IN PLACE, is material in the form of debris, fragments of rocks, boulders, wash, loose rocks, etc., which lie unattached or loose upon the surface of a solid formation, or ground, [840]

LODE OR VEIN, is mineralized matter contained between two walls, the mineral value of which is greater than that contained in the adjoining country rock, and different in character from the country rock. A lode or vein does not necessarily have a dip or strike.

IN PLACE, means in a fixed solid position.

Hence, if any of the mineral within the boundaries of Salt Lake No. 3, Midas and Evening Star mining claims, was discovered by defendant's predecessors in interest, or grantors, in the solid rock and not in the wash or loose rock, but between walls of country rock, then such discoveries were of mineral-bearing rock in place.

The Court instructs the jury that it is immaterial to the validity of the location of a lode mining claim, whether or not there is a discovery of a lode or vein of mineral-bearing rock in place made at or before the time of such location, and it is sufficient if such discovery be made at any time subsequent thereto, and at any other place on the claim different from the supposed or purported point of discovery thereon, provided work in the amount required by law for making such a discovery is performed at such point

of subsequent actual discovery of the lode, vein or mineral-bearing rock in place; and provided that such actual discovery and discovery work be actually made and done, before the making of any conflicting mining location upon the same ground or portions thereof.

If you find from the evidence in this case that such discovery had in fact been made on the Salt Lake No. 3, and that the discovery and discovery work required by law had been in fact made upon the Midas and the Evening Star, or either thereof, and that such discoveries occurred either at the respective points [841] of location denoted by the location certificates for the respective claims, or at any other point or points upon either of said claims, at any time prior to the making of the conflicting placer locations by the plaintiffs or their grantors, to wit, the Guy Davis or the Homestake placers, then you will find for the defendant on the issue as to such actual prior locations by the defendant's grantors and predecessors.

The Court instructs the jury that whenever a locator has discovered a lode or a vein of mineral-bearing rock in place, and posts his discovery notice and monument, and monuments the ground on his boundaries, records his location certificate, complies with the legal requirements, his location is complete, and it is immaterial to the continued validity thereof, if the discovery monument shall thereafter be removed or lost, or the point of discovery become covered, obliterated or in doubt. And if you find from the evidence in this case that such lode, or vein containing mineral-bearing rock in place, was in fact

discovered upon the three lode mining claims involved herein, and that the same were duly monumented, then the Court instructs you that there was a sufficient discovery, even though the precise points where such discoveries were made on any one or more of said three lode mining claims, have become lost, covered, or unknown, or the location monument removed, lost or destroyed at some time subsequent to the making of such lode locations respectively.

The Court instructs the jury that if you find from the evidence that the defendant and his grantors had entered and held possession of the lode mining claims involved in these actions and worked the same in the usual and customary way in the vicinity [842] thereof for a period of two years prior to the making of the placer locations of the plaintiffs, then the law presumes in aid thereof that all the acts necessary to a valid location of said lode mining claims had been done and performed at the time of such lode mining locations, and that such possession (having the legal effect of a location under the law) is sufficient to give the defendant's grantors a lawful right to the possession of said mining claims, if kept alive as required by law, as against the subsequent placer locations of the plaintiffs' grantors.

The Court instructs the jury that if at the time of the initiation of the lode mining claims or locations herein involved by defendant's grantors, or at any time thereafter prior to plaintiffs' placer locations mineral-bearing rock in place was discovered on said lode mining locations by the locators or owners thereof, but at some point not midway between the side

lines thereof, but east or west from such center line, and the required amount of location work performed thereon according to law at the time thereof, as elsewhere instructed, and the owners held adverse possession of said claims according to the boundary monuments upon the ground for two years prior to plaintiffs' placer locations, then the Court instructs you that such adverse possession related to all the ground embraced within the exterior lines of said locations as monumented, and it is immaterial to the rights of defendants and his grantors, where the point of discovery within such exterior lines, was or occurred. [843]

The Court instructs the jury that whereas the plaintiffs in their case in chief introduced certain evidence tending to show or indicate that the ground comprised in the lode mining claims of the defendant, the Salt Lake No. 3, the Midas, and the Evening Star, contained no lodes. veins, or mineral-bearing rock in place, and were not subject to entry or location as lode mining claims by defendant's grantors, and that said lode locations were therefore invalid and never lawfully initiated, so that plaintiffs' placer locations occurring thereafter were valid locations upon the grounds in conflict with said placers, but did not introduce any evidence of failure of defendant or his grantors to perform annual assessment work upon such lode mining locations; therefore the Court instructs you that no such forfeiture or abandonment by failure to do assessment work is an issue herein, and you have no finding to make thereon, and defendant's lode locations, if established

to your satisfaction under the rules elsewhere given you, are not affected by any question as to whether they did or did not do the annual assessment work of $100 per annum upon each claim previous and up to the time of plaintiffs' said placer locations. That such question is not now available to the plaintiffs as a ground of attack upon the conflicting lode locations of the defendant. [844]

The Court instructs the jury that every resident of the United States is a citizen thereof over the age of twenty-one years. Long residence strengthens these presumptions. Hence in the absence of proof to the contrary, you may find that in 1898 J. H. Clive was a citizen of the United States over the age of twenty-one years.

And the law makes those persons citizens of the United States who are born in the United States, or who are naturalized, or whose fathers are naturalized before they attain to the age of twenty-one years, and while they are living with their father within the United States. Under this rule, under the undisputed evidence, Joseph Jurey was a citizen of the United States in 1907 when the Midas and the Evening Star mining claims were located.

The Court instructs the jury, that if you find from the evidence that at the time of the entry and making by the plaintiffs or their grantors, of the Homestake placer and the Guy Davis placer, the defendant or his grantor, was in possession of the ground, or any portion thereof, covered by such placer locations or filings, under and by virtue of prior location or locations, as lode mining claim or claims, and the

performance of annual labor or improvements thereon during the same or the preceding year according to the legal requirements as elsewhere herein explained to you, then you are instructed that the entry thereon and the making of said placer locations was unlawful and void, that the same were in law trespasses on the rights and possession of the defendant; that all their steps of alleged discovery, of minerals, the posting or recording of notices, or the monumenting of said placers were ineffectual; and that the plaintiffs, and their grantors acquired no rights whatever by reason of said placer locations. [845]

The Court instructs the jury that in case No. 1872 now on trial, involving the Adverse of the owners of the Homestake placer against the patenting of the Midas and the Evening Star lode mining claims, the original plaintiffs who instituted the action, and purport to have filed the Adverse in the U. S. Land Office, were J. J. Healey, Murray Scott, William Forman and George B. Thatcher.

That at the time of the opening of the trial herein, the following parties were upon plaintiffs' application, substituted as parties plaintiff in place of said original plaintiffs, viz.: George A. Cole, Ed. Malley, Gilbert C. Ross, J. J. Healey, Guy Davis, George B. Thatcher and William Forman.

The Court instructs you that unless each and all of the present parties plaintiff, last named, were either interested in said Homestake placer, as the owners of undivided interests therein at the time when this action was begun on Sept. 30, 1914, and

filed the adverse in the U. S. Land Office at Elko, Nev., in support whereof this action was begun; or else, that such of the present above-named plaintiffs as were not original adversing plaintiffs have since this action was filed on Sept. 30, 1914, purchased or acquired an undivided interest in said Homestake placer mining claim, from one of said original plaintiffs who began the action and filed said adverse then none of the plaintiffs can recover in this action.

And if some of the present parties plaintiff aforesaid were neither plaintiffs at the beginning of this action nor have purchased an undivided interest since said time, from one of the parties plaintiff at the beginning of the action who filed said adverse, you cannot find a verdict in favor of any one of the present parties plaintiff in this action. [846]

The Court instructs the jury that in case No. 1873 now on trial, involving the adverse by the owners of the Guy Davis placer against the patenting of the Salt Lake No. 3 lode mining claim, the original plaintiffs who began and prosecuted this action and who alleged that they filed the adverse in the U. S. Land Office at Elko, Nevada, were Guy Davis, Noah Faubert and George B. Thatcher.

That at the time this trial opened, the following named parties were upon plaintiffs' application, substituted as parties plaintiff, in place of said named original plaintiffs, viz.: George A. Cole, Gilbert C. Ross, J. J. Healey, Guy Davis, George B. Thatcher and William Forman.

The Court instructs you that unless each and all of the present parties plaintiff, above named, were

either interested in said Guy Davis placer mining claim, as the owner of undivided interests therein at the time when this action was begun, on Sept. 30, 1914, and also joined in filing the adverse aforesaid, in the U. S. Land Office at Elko, Nevada, in support whereof this action was begun; or else, that they the present plaintiffs, or such of them as were not original adversing plaintiffs aforesaid, have since this action was begun purchased or acquired an undivided interest in said Guy Davis placer mining claim, from one of the original adversing plaintiffs since the beginning of this action on Sept. 30, 1914.

If some of the present plaintiffs were neither adversing plaintiffs at the beginning of the actions, and have not since the beginning of this action purchased an undivided interest from one of the adversing plaintiffs, then you cannot find a verdict in favor of any of the parties plaintiff to this action. [847]

The Court instructs the jury that in order to entitle the plaintiffs to recover herein, they must prove by a preponderance of the evidence, all the material allegations of their complaints herein, and unless you believe and find from the evidence that the plaintiffs have proved all the material matters alleged in their complaints herein, by a preponderance of the evidence, then your general verdicts must be for the defendant.

You are further instructed that all the instructions given you in the two cases now on trial are to be understood as being given you separately in each of the two cases now on trial, as far as applicable to the facts therein, the same as if these two actions were

being tried separately, and you are to return separate verdicts, general and special, in each case, according to the instructions of the Court.

You are instructed that there has been no evidence introduced by the plaintiffs to show that there was no assessment work done on the Salt Lake No. 3, the Midas and the Evening Star Lode Mining Claims for the year 1912, or for the year 1913. You are therefore instructed to find that such assessment work was in fact done for those years. [848]

At the conclusion of the argument the Court instructed the jury as follows:

**Charge of the Court to the Jury.**

The COURT.—Gentlemen, I want to thank you for your patience and the careful attention with which you have received the testimony and the arguments of counsel; and I also want to say that counsel in their treatment of each other and of the witnesses, and the jury, as well as the Court, have been uniformly courteous and considerate. It is the right way to try cases.

There are two cases here which have been consolidated by stipulation of counsel, and they require two verdicts and two judgments; that, however, will not disturb you. You can readily appreciate the reason for trying the two cases together.

The defendant filed an application in the United States Land Office for a lode patent on three lode claims, covering the ground shown on the plat. The plaintiffs claim to have covered the Salt Lake No. 3, and a portion of the two other lode claims, with placer locations. The question now is, which is en-

titled to the ground? It is a question as to which located properly, and in accordance with the statutes. Practically the only attack which has been made on the placer claims is that they were located on ground not open to location at the time.

It is a fundamental principle of the mining law that there must be a discovery; without a discovery there is no location: The United States statutes require a discovery, and a marking of the ground, so that the boundaries of the claim can be readily traced; and if there be a record, the record must give the name [849] of the locator, the name of the claim, and such a description of the claim with reference to some natural or other object, that it can be readily identified.

The State statutes go still further, and require other essentials, which I will read later in the instructions.

It appears here—and I think it is conceded by both parties—that not only the lode locations, but the placer locations, were properly staked, notices were placed, and certificates which complied with the law were recorded in the recorder's office; and practically the only question involved, as I have indicated before, is the question as to whether a valid discovery had been made by the lode locators prior to the time when the placer locators went on the ground.

There has been some testimony as to the annual assessment work. Plaintiffs in making their case, however, did not attack the lode locations on the ground of failure to perform such work, consequently you cannot find that the lode locations here

are invalid, or that plaintiffs are entitled to recover, because of any forfeiture arising from a failure to perform assessment work. That will be a matter for the future between plaintiffs and the Government, if plaintiffs prevail.

In order to constitute a valid location of the Midas and Evening Star, it was necessary for the defendant, or his predecessors in interest, in this action to make a discovery within the boundaries of each claim, and to post at the point of discovery a notice of such location, which notice must contain the name of the lode or claim, the name of the locator or locators, the date of location, the number of linear feet claimed in length along the course of the vein each way from the point of discovery, with the width on each side of the center of the vein, and the general [850] course of the vein or lode as near as may be. The locator shall also before ninety days from the posting of his notice on the claim sink a discovery shaft on the claim located, to a depth of at least ten feet from the lowest part of the rim at the surface, or deeper, if necessary, to show by such work a lode deposit of mineral in place. A cut or cross-cut, or tunnel, which cuts the lode at a depth of ten feet, or an open cut along the ledge or lode equivalent in size to a shaft four by six by ten feet deep, is equivalent to a discovery shaft. The locator must define the boundaries of his claim; but in this case there is no contention, and it is admitted that the boundaries were so defined. These acts of location are necessary, and must have been performed by the defendant or his grantors prior to the location of the Homestake Placer by the plaintiffs.

If you believe from the evidence that William T. Jurey and Joseph Jurey on March 27, 1907, were citizens of the United States over the age of twenty-one years; that on said date they made a discovery either of a mineral-bearing vein or of mineral-bearing rock in place on unoccupied and unappropriated public land, and on the ground described as Midas claim, and a similar discovery on the ground described as Evening Star claim; that on the date stated they placed certificates of location at or near the discovery points on each of the claims, and there built discovery monuments of rock and dirt about four feet high and four feet across; that on the same day they erected wooden location posts four by four inches in thickness and four feet high at the centers of the side lines and at the corners of the claims, and within ninety days thereafter made a cut ten feet deep, ten feet long and six feet wide on the Midas claim, and a cut twenty feet long, ten feet wide and ten feet deep on the Evening Star claim; [851] that on March 27, 1907, in good faith they erected wooden location posts four by four inches in thickness and four feet high at the centers of the side lines and at the corners of the claims; that on June 21, 1907, they recorded certificates of location of the claims in the office of the county recorder of Lander County, Nevada; and that the defendant, on August 1, 1914, was, and now is, a citizen of the United States, and the owner of all the right, title and interest of William T. Jurey and Joseph Jurey, and their grantees, in and to the said claims, then your general verdict should be for the defendant as to the said Midas and Evening Star lode mining claims.

This instruction I am giving you at the request of the defendant, and it is correct except in these particulars: The discovery shaft must disclose a mineral-bearing vein in place, and the discovery must be of a vein of rock in place carrying valuable minerals of gold, silver, or other precious metals in quantity sufficient to justify a reasonably prudent man in developing and prospecting the claim.

Prior to the year 1897 the law did not require any location work, such as the sinking of a shaft, adit, or open cut on a lode mining claim at or near the point of discovery, and the location of the Salt Lake No. 3 is unaffected by any such requirement. In 1897 a Nevada statute was adopted requiring location work to be performed at the point of discovery in the form of a shaft or cut at least ten by six by four feet upon or along the vein or lode, which requirement affected locations made thereafter during that year, and afterwards. Consequently the Nevada statute governs the location of the Midas and Evening Star.

In order to constitute a valid location of the Salt Lake No. 3, the defendant in this case must have made a discovery of mineral-bearing rock in place therein, and must have placed at or in [852] such reasonable proximity to the discovery to give notice to all comers, a location monument, and posted a location notice thereon, and defined the boundaries of said claim by monuments readily traceable on the ground. All of these acts must have been performed by the defendant prior to the entry and location by the plaintiffs in this action.

If you believe from the evidence that J. H. Clive,

on February 2d, 1897, was a citizen of the United States over the age of twenty-one years; that on said date, for him, a discovery either of a mineral-bearing vein or of mineral-bearing rock in place was made on unoccupied and unappropriated public land, and on the ground described as Salt Lake No. 3 claim; that on the date stated the locators placed a notice of location at or near the discovery point, and there built a discovery monument of rock about four feet high and four feet across; that the locators on the same day in good faith erected wooden location posts four by four inches in thickness and four feet high at the centers of the side lines and at the corners of the claim; that on February 5, 1897, J. H. Clive recorded the notice of location in the office of the district recorder of Battle Mountain mining district, Battle Mountain, Nevada, and on February 8, 1897, recorded it in the office of the county recorder of Lander County, Nevada; and that the defendant on August 1, 1914, was, and now is, a citizen of the United States, and the owner of all the right, title and interest of J. H. Clive and his grantees in and to the Salt Lake No. 3 claim, then your general verdict should be for the defendant as to said Salt Lake No. 3 mining claim.

This is also an instruction which I give you at the request of the defendant, and it is substantially correct, with the same definition as to what constitutes a discovery which I have given [853] you before; and, of course, the record of the claim must give such a description of it that it can be readily identified with reference to some natural or permanent monu-

ment, and it must contain the name of the locator or locators, and the name of the location.

It is also stated that these locations must have been on open, unappropriated public land. That is true as to all of them; there can be no mineral location except on open, public land; and I think there is no question raised as to the character of the Salt Lake No. 3 and the Evening Star.

The testimony offered with reference to the Yellow Jacket has some bearing on the location of the Midas; and it will be for you to examine that testimony, and determine whether the Yellow Jacket at the time when the Midas was located was a valid, subsisting claim, and whether it covered the ground, or a portion of the ground now included within the Midas, and particularly whether it covered the discovery and the location point of the Midas; if it did, then that ground was not open to location at the time.

In order to constitute a valid discovery on a lode mining claim three elements are necessary: There must be a vein or lode of quartz or other rock in place; the quartz or other rock in place must carry gold or some other valuable mineral deposit; and the two preceding elements, when taken together, must be such as to justify a prudent man in the expenditure of his time and money in the effort to develop a valuable mine. You are therefore instructed that even though you may believe and find from the evidence that the grantors of defendant made a discovery of a vein or lode on the Salt Lake No. 3, yet if your further believe and find from the evi-

dence that such vein or lode so discovered did not
[854] *did not* carry gold or some other valuable mineral deposit in such quantities as to justify a prudent man in the expenditure of his time and money in the effort to develop a mine then you will find the issues in favor of the plaintiffs.

The same is true, also, of the Evening Star and the Midas.

A number of assay certificates have been introduced. Some question was made as to whether such certificates could be admitted with reference to cut number 2 on the Salt Lake No. 3. You will remember there was a conflict in the testimony as to whether Mr. Ralph actually discovered a vein in that cut, it is for you to determine whether he made an actual discovery there before the placer claims were located. If you find that he did actually discover such a vein before that time in cut number 2—and you must understand also that a discovery means that he appreciates it; you stumble over a purse without knowing there is a thousand dollars in it, and go on, you haven't discovered anything; but if the thousand dollars is there, and you know it, then you have a discovery; so, if a man stumbles over a claim without appreciating what it is, or knowing what it is, or thinking of what it is, he has made no discovery; he must believe and realize that he has found something, and discovered such a vein as I have indicated. If you find such a discovery was made, then you will be permitted to go further, and consider the assay certificates. In determining whether he made a discovery, you have a

right to consider his actions, and what he said, and what he did not say. But through all your deliberations, you are to remember that the date when the placer locations were made, or attempted, is the date to which you are to pay special attention. Any location work performed on the lode claims prior to that time by Mr. Ralph, or by any of his grantors, will inure to his benefit, even though there was no valid discovery at the time of the original locations; [855] if a valid discovery was made before the placer locators entered, it is sufficient.

It is not sufficient to constitute a discovery within the meaning of the requirements of the law, concerning lode claims that the locator would be willing to expend his time and money in developing it. Willingness, unless evidenced and followed by actual exploitation, would be a mere mental state, which could not be satisfactorily proved. The facts which are within the observation of the discoverer and which induced him to locate should be such as would justify a man of ordinary prudence, not necessarily a skilled miner, in the expenditure of his time and money in developing the property.

The laws of the United States require as one of the essential conditions of the making of a valid location of unappropriated public lands of the United States under the mining laws, a discovery of mineral within the limits of the claim, and the exclusive right of possession is conferred only on one who has made a valid location, one of the essentials of which is a valid discovery. Prior to such discovery mineral land is in law vacant and open to

exploration and location, subject to the rule that no prospector is authorized by any form of forcible, fraudulent, surreptitious or clandestine conduct to enter or intrude upon the actual possession of another prospector; for every miner upon the public domain is entitled to hold the place in which he is working against all others having no better right. The actual possession of the prior arrival will be protected to the extent needed to give him room for work, and to prevent probable breaches of the peace; but while he is thus protected his possession must yield to the actual location on a valid discovery made by one who has located peaceably, and neither clandestinely nor [856] with fraudulent purposes. Parties may not go upon the public domain and acquire the exclusive right of possession by the mere performance of acts prescribed for location, in the absence of a valid discovery.

A competent person may go on the public domain of the United States with a bona fide intention of making a discovery of mineral, and may define the boundaries of his claim by means of notice and monuments thereon, and so long as such locator is in the actual possession of his location so defined, endeavoring to make a discovery, he will be entitled to the peaceable possession of such claim as against one entering thereon as a trespasser; but in the absence of a discovery should he permit another competent person to go peaceably upon the claim, and should such person make a valid discovery of mineral and locate the same, and in all things comply with the requirements as to monumenting, posting

notice and recordation, then such subsequent locator would acquire the title to such claim so located, subject only to the paramount title of the United States. Of course it will be necessary for him to comply with all of the Nevada statutes and regulations, which fix the manner in which a claim shall be located.

The locators of the placer claims, the Guy Davis and Homestake, have each performed all of the acts necessary and required by the statutes of the United States and the laws of the State of Nevada in the discovery and location of a placer claim. If you find from the evidence and the instructions of the Court that no valid location was made on the Salt Lake No. 3 your verdict must be for the plaintiffs as to the Guy Davis placer. If you find from the evidence and the instructions of the Court that no valid location was made on the Midas and Evening Star lodes, your [857] verdict must be for the plaintiffs for the Homestake placer.

As I have said before, there are two cases here, and each party is, in a sense, an actor; the burden is on each party to establish the validity of his own location. The burden is on the plaintiffs in the first instance, to show that when they went on these claims to locate the placers, the ground was open to location, and that there were at that time no valid, subsisting locations where their discoveries were made, and their notices posted.

No question, I believe, has been raised in the case as to the sufficiency of subsequent acts; the goodness of their title, if they have any, depends upon whether the ground was open to location at the time

the placer locations were made.

The mere fact, if it be a fact, that the location monument has been disfigured or removed, or that the discovery point upon a claim has been obliterated, does not of itself invalidate a lode location otherwise valid.

The general instructions in a case of this kind are few. In the first place, the Court is to give you the law, and you are to follow it implicitly. As to the facts, your judgment is final; it is controlling. It is immaterial what the opinions of court or counsel may be; your judgment is the thing that is demanded by the law, and you are to follow the opinion of court and of counsel only when they commend themselves to you *are* being supported by the facts. You cannot go beyond the record or beyond the testimony which has been given on the witness-stand for your facts. You cannot decide this case on the ground of sympathy, or on account of the social or financial condition of the parties; you must decide it solely and only on the evidence as it is given here, and as men who are sworn to try these cases fairly, and according to the law and the evidence. [858] You must do that which is just and right as between man and man.

You are to determine also the credibility of the witnesses. You are at liberty to weigh their testimony, and it is your duty to do so, and in doing it, you can consider the motives of each of the witnesses, and the interest which they have in this litigation, if any interest appears. If a witness has deliberately and willfully testified falsely as to any

material matter, you are at liberty to disregard the whole of his testimony, except where it is corroborated by other credible evidence in the case. If a witness is mistaken, and has not testified correctly, and you are satisfied that it is a mistake, and not a willful one, that alone will not justify you in disregarding his testimony, but it will require you to examine his testimony with care.

It takes twelve of your number to find a verdict, and when you have agreed upon your verdict, you will notify the marshal, and you will be brought into court.

Two forms of verdict have been prepared; the one in the first case is as follows: We, the jury, find a general verdict for ———. You will write either plaintiffs or defendant, as you find the facts warrant. Attached to it is a special interrogatory, which reads as follows: Was there a valid discovery of a lode within the limits of the Salt Lake No. 3 made by the defendant or his grantors, prior to the date when the Guy Davis placer is alleged to have been located? You will answer the question yes or no, as you find.

The second one is similar. This involves the Evening Star and the Midas. The general verdict is a blank form: We, the jury, find a general verdict for the plaintiffs or the defendant, as the case may be, and your foreman will sign it. There are two *inter*-interrogatories; [859] the first is: Was there a valid discovery of a lode within the limits of the Midas made by the defendant or his grantors prior to the date when the Evening Star placer is alleged to have been located? The second is: Was

there a valid discovery of a lode within the limits of the Evening Star made by the defendant or his grantors prior to the date when the Homestake placer is alleged to have been located?

Now, gentlemen, have you any requests to make, or exceptions to take?

Mr. SPRINGMEYER.—We except to the refusal of the Court to give instructions requested by the defendant, on the ground that they accurately and correctly state the law applicable to the facts, and are not covered by other instructions.

We also except to the instructions of the Court given as requested by the plaintiffs, on the ground that they do not correctly state the law as applicable to the facts here. And, further, we except to the refusal of the Court to give the instructions requested by the defendant on the ground that they accurately and correctly state the law with reference to the pleadings and the issues presented in this case.

Mr. ELLIS.—We think that part of the Court's instruction relating to the absence of a discovery should not be given, because there is not sufficient *prima facie* evidence submitted by the plaintiffs on their behalf to sustain the burden which is upon them to show that the land was vacant and unoccupied at the time they attempted to make the placer locations; that that burden follows the plaintiffs all the way through the case, involving a necessity to disprove the making of a discovery by the defendant or his grantors previous to their own placer locations. [860]

Also that portion of the charge which relates to

the rule of prudence which might, as an abstract proposition, be in some cases correct, but in this case unless the conditions and circumstances under which the locator acted at the time are presented to the jury in evidence, they have no predicate, no basis, upon which to form a judgment whether a prudent man would have acted thus and so or not; and that the correctness of another man's judgment should not be passed upon without all the facts upon which he bases his judgment are before the reviewing tribunal or the jury.

The COURT.—Have you any requests, or exceptions?

Mr. THATCHER.—We have no requests and no exceptions.

The COURT.—You will have each of the exceptions you have mentioned, and perhaps I had better state now, in these cases you are expected to put your finger on the precise defect in order to get an exception. I have mentioned a number of matters here which were discussed before the argument commenced, and as to them, I am willing to give you an exception, because I understood them, in addition to those you have already made, if you want them.

Mr. SPRINGMEYER.—Yes, we should like to have that entered in the record.

The COURT.—And it is the same way with counsel on the other side; if you wish, you may have exceptions to any of those matters. [861]

Upon the presentation to the Court by the plaintiffs of their special requests for instructions to the jury, the defendant objected to the same, and to each

and all parts thereof, which propose to submit to the jury for decision and finding, the question whether or not a discovery of a lode or vein of mineral-bearing rock in place to justify a prudent man in expending his time and money to develop the same, had been made by the defendant's grantors upon or within the limits of the Salt Lake No. 3, the Midas and the Evening Star lode mining claims prior to the plaintiffs Homestake or Guy Davis locations, respectively, or whether defendant's grantors had prior to said placer claims made a discovery shaft or other discovery work upon said lode claims at the point of discovery, or of posting notices, recordation, marking or monumenting said claims, or either of them, or the question of the doing of any other step essential to the making of a valid location of said three lode claims or either of them.

On the ground that there is no evidence of the failure of defendant's grantors or the locators of said lode claims to make such mineral discoveries, do necessary discovery work, or perform any of the other acts which are essential to valid mining location of said lode claims, and the Court should not instruct the jury upon any hypothesis not presented by competent and material evidence within the issues.

On the further ground that the undisputed evidence of the prior adverse possession of the ground embraced within said three lode mining claims by defendant's grantors according to law, for more than two years prior to the initiation of the Guy Davis or the Homestake locations, is the full legal equi-

valent of all the acts and steps required by law to make or initiate valid mining locations of each of said lode claims, including discovery of mineral and the other necessary acts of location, and evidence is not admissible to overthrow the presumptions of ownership and title created by the statute of limitation.

The Court overruled said objections, and gave said instructions submitting said questions to the jury; to which ruling defendant excepted. [862]

Upon the refusal of the Court to instruct the jury as to the law of adverse possession, and the rights acquired by defendant's grantors, by their prior adverse possession of said lode mining claims involved in this action for more than two years prior to the initiation of plaintiffs' Homestake and Guy Davis locations, the defendant duly excepted.

To the refusal of the Court to instruct the jury, defining the law of adverse possession of mining claims, as requested by the defendant in his special requests, Nos. 6, 7, 8, 10, 11, 16 and 17 each respectively, the defendant duly excepted, on the ground that said requests each correctly state the law as applicable to the facts, and are necessary to the assertion of defendant's defense of said adverse possession. [863]

THEREUPON the jury at 5:15 P. M. retired to consider of their verdicts, and at 7:30 P. M. returned into court with the following verdicts:

**Verdict.**

*In the District Court of the United States, in and for the District of Nevada.*

No. 1872.

Involving the Adverse of the Homestake Placer Against the Midas and the Evening Star Claims.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

We, the Jury, find a general verdict for the plaintiffs.

J. G. KAUFMAN,
Foreman.

Dated June 2d, 1915.

**Special Verdict.**

Was there a valid discovery of a lode within the limits of the Midas, made by the defendant or his grantors prior to the date when the Evening Star Placer is alleged to have been located?

Answer: No.

J. G. KAUFMAN,
Foreman.

Dated June 2d, 1915. [864]

**Special Verdict.**

Was there a valid discovery of a lode within the limits of the Evening Star, made by the defendant or his grantors prior to the date when the Homestake Placer is alleged to have been located?

Answer: No.

J. G. KAUFMAN,
Foreman.

Dated June 2d, 1915.

*In the District Court of the United States, in and for the District of Nevada.*

No. 1873.

Involving Adverse of the Guy Davis Placer Against Salt Lake No. 3 Lode Mining Claim.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

We, the Jury, find a general verdict for the plaintiffs.

J. G. KAUFMAN,
Foreman.

Dated June 2d, 1915.

**Special Verdict.**

Was there a valid discovery of a lode within the limits of the Salt Lake No. 3, made by the defend-

ant or his grantors prior to the date when the Guy Davis Placer is alleged to have been [865] located?

Answer: No.

J. G. KAUFMAN,
Foreman.

Dated June 2d, 1915. [866]

I, A. F. Torreyson, DO HEREBY CERTIFY that I reported the cases entitled George A. Cole, Ed. Malley, Gilbert C. Ross, J. J. Healey, Guy Davis, George B. Thatcher and William Forman, Plaintiffs versus Joseph Ralph, Defendant, Nos. 1872 and 1873, tried in the District Court of the United States, in and for the District of Nevada, commencing May 25th, 1915, and ending June 2d, 1915, and that the foregoing transcript, consisting of pages 1 to 851, both inclusive, is a full, true and correct transcription of my shorthand notes of the testimony given and proceedings had in the trial of said cases.

A. F. TORREYSON,
Shorthand Reporter.

Dated: Carson City, Nevada, July 9th, 1915. [867]

Thereupon the defendant duly excepted to the general and to the special verdict of the jury, in case No. 1872, and to the general verdict and to each of the special verdicts in case No. 1873, for that the evidence is insufficient to sustain said verdicts, or either of them.

Thereupon the Court rendered and caused to be entered up the judgment of the Court upon the ver-

dicts in case No. 1872, and the defendant thereupon excepted to said judgment and to the entry thereof, because the evidence is insufficient to sustain said judgment, and the same is against law.

Thereupon the Court rendered and caused to be entered up the judgment to the Court upon the verdicts in case No. 1873, and the defendant thereupon excepted to said judgment and to the entry thereof, because the evidence is insufficient to sustain said judgment, and the same is against law.

*In the District Court of the United States for the District of Nevada.*

No. 1872.

Involving the Adverse of the Owners of the Homestake Placer Against the Midas and the Evening Star Lode Mining Claim.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

and

No. 1873.

Involving the Adverse of the Owners of the Guy Davis Placer Against the Salt Lake No. 3 Lode Mining Claim.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Stipulation.**

It is hereby stipulat*ion* and agreed by and between the respective parties plaintiffs and defendant in the above cases Nos. 1872 and No. 1873, by their respective attorneys, that all of the original exhibits [868] introduced, and writings offered in evidence, by either party on the trial of the above-mentioned actions in the above-styled Court, may be used on the hearing of defendant's motion for new trial of said causes in this court, by either party, and in the event that said causes, or either of them, shall *by* removed for review into any higher court or courts of the United States, that said original exhibits and writings or articles offered or introduced in evidence at the trial, may be transferred into such court of review where these causes, or either of them may be removed and shall be pending, and used upon the

hearing and determination of said causes upon review, to the same extent and with the same force and effect as if the same had each been incorporated or copied or reproduced in the Bill of Exceptions or Statement of the case upon Review, and set out in the original and copies of the transcript to be filed in the above-entitled action. It shall be sufficient that said exhibits, articles and writings are referred to in such Bill, Statement, or Transcript.

Dated this —— day of July, A. D. 1915.

GEO. B. THATCHER,
WM. FORMAN,
Attorneys for Plaintiffs.

P. G. ELLIS,
GEORGE SPRINGMEYER,
Attorneys for Defendant.

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*In the District Court of the United States for the District of Nevada.*

No. 1872.

Involving the Adverse of the Homestake Placer Against the Midas and the Evening Star Lode Mining Claim.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

and

No. 1873.

Involving the Adverse of the Guy Davis Placer Against the Salt Lake No. 3 Lode Mining Claim.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Stipulation for One Bill of Exceptions. [869]**

It is hereby stipulated and agreed by and between the respective parties plaintiffs and defendant in the above-entitled actions, by their respective attorneys, that in pursuance of the stipulation whereby said actions were tried together before the Court and a jury, there shall be but one Bill of Exceptions, which shall be taken to apply to both of said cases, and which when settled and authenticated as such, shall be filed in each of said cases, and shall be and become a part of the record in both cases, for all purposes, not only in connection with the hearing upon defendant's motions for a new trial, but as well upon review in any court of review into which said causes or either of them shall be removed; and the same shall be used in all cases and have the same force and effect as if duplicated, and a separate Bill of Exceptions filed in each case.

Dated this July 30th, A. D. 1915.

GEO. B. THATCHER,
WM. FORMAN,
Attorneys for Plaintiffs.

P. G. ELLIS,
GEORGE SPRINGMEYER,
Attorneys for Defendant.

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*In the District Court of the United States for the District of Nevada.*

No. 1872.

HOMESTAKE

vs.

MIDAS and EVENING STAR.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

and

No. 1873.

GUY DAVIS,

Plaintiff,

vs.

SALT LAKE No. 3.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

To the Honorable E. S. FARRINGTON, Judge of said Court:

Comes now the defendant Joseph Ralph, defendant in each of the two above-entitled actions, in said court, by his attorneys, and having caused to be prepared the reporter's stenographic transcription of the evidence and proceedings at, during and since the trial of said two actions (in three volumes) and believing the same correct, do hereby present and tender the same to your [870] Honor, and request that the same may be by your Honor signed, sealed, settled, authenticated, and ordered to be made part of the record in each of said above-entitled actions, as and for a Bill of Exceptions.

Dated this July 28th, A. D. 1915.

GEORGE SPRINGMEYER,
P. G. ELLIS,
Attorneys for Defendant.

*In the District Court of the United States for the District of Nevada.*

No. 1872.

Involving the Adverse of the Homestake Placer Against the Midas and Evening Star Lode Mining Claims.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

and

No. 1873.

Involving the Adverse of the Guy Davis Against the Salt Lake No. 3 Lode Mining Claim.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Order Settling Bill of Exceptions.**

The foregoing was duly prepared and submitted to me as a Bill of Exceptions by defendant within

the time allowed therefor by the Order of the Court, and is now signed, sealed and settled as and for a Bill of Exceptions in each of the above-entitled actions in this court, which [871] were tried together by agreement of the parties, and pursuant to Stipulation of parties.

The foregoing was duly prepared and submitted to me, and I hereby certify that the foregoing Bill of Exception is full, true and correct, and has been settled and allowed, and that the same contains all of the evidence introduced in the above-entitled cases, save and except the original exhibits covered by the stipulation on file in this action, and said Bill of Exceptions is hereby ordered to be made a part of the record in each of the said actions, as such Bill of Exceptions.

30th day of July, 1915.

E. S. FARRINGTON,
District Judge. [872]

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At a stated term, to wit, the October term, A. D. 1916, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Tuesday the twenty-seventh day of February, in the year of our Lord one thousand nine hundred and seventeen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable CHARLES E. WOLVERTON, District Judge.

(Undocketed.)

JOSEPH RALPH,

Appellant and Plaintiff in Error,

v.

GEORGE A. COLE et al.,

Appellees and Defendants in Error,

JOSEPH RALPH,

Appellant and Plaintiff in Error,

v.

GEORGE A. COLE et al.,

Appellees and Defendants in Error,

**Order Extending Time to File Records and Docket Causes.**

Upon consideration of motion of counsel for Joseph Ralph, filed February 27, 1917, and good cause therefor appearing, it is ordered, that the time to file records and docket the above-entitled causes in this court be, and hereby is extended to and including April 2, 1917.

[Indorsed]: No. Undocketed. United States Circuit Court of Appeals for the Ninth Circuit. Joseph Ralph, Appellant and Plff. in Error, vs. George A. Cole et al., Appellees and Defts. in Error. Copy of Order extending time to file records and docket causes. Filed March 6th, 1917. T. J. Edwards, Clerk, U. S. Dist. Court, Dist. Nevada. By H. D. Edwards, Deputy Clerk. [873]

*In the United States District Court for the District of Nevada.*

No. 1872 AT LAW.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GEORGE B. THATCHER, GUY DAVIS, and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

and

No. 1873—AT LAW.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GEORGE B. THATCHER, GUY DAVIS, and WILLIAM FORMAN,

Plaintiffs,

vs.

JOSEPH RALPH,

Defendant.

**Joint Certificate to Supplemental Transcript.**

I, T. J. Edwards, Clerk of the U. S. District Court for the District of Nevada, do hereby certify that the foregoing eight hundred seventy-three pages numbered from 1 to 873, inclusive, to be a full, true and correct copy of the record and all proceedings had and filed in the above-entitled two actions, so far as the same were had or filed in common or

jointly in both cases, and not singly in either, and embraced within the praecipe of counsel as set out therein. [874]

I further certify that pursuant to stipulation on page 868 of this transcript of record, I have this day forwarded to the Clerk of the U. S. Circuit Court of Appeals, Plaintiffs' Original Exhibits marked "A," "J," "K," "A-8," "A-10," "A-11," "A-12," "A-13," and Defts. Original Exhibits Numbered 1, 2, 3, 6, 7, 9, 12, 13, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 36, 45, 46, respectively; and also certain payrolls of the Glasgow and Western Exploration Company offered in evidence at the trial by the defendant, and a certificate of record of taxes paid, also offered by defendant, and rejected by the Court, as shown in bill of exceptions, filed in said cases.

This transcript is certified as supplemental to the individual transcripts prepared and certified in each of said cases pursuant to the Circuit Court of Appeals.

And that the same together with the original citation upon appeal and citation upon error and writ of error annexed hereto with said separate transcripts, constitute the return to said writs of error and appeals.

I hereby certify that the cost of the foregoing transcript of the record is $769.20 and that the same has been paid by appellant and plaintiff in error.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of said Court at my office in

Carson City, Nevada, on this 12th day of March, A. D. 1917.

[Seal] T. J. EDWARDS,
Clerk. [875]

[Endorsed]: No. 2952. United States Circuit Court of Appeals for the Ninth Circuit. Joseph Ralph, Plaintiff in Error, vs. George A. Cole, Ed. Malley, Gilbert C. Ross, J. J. Healey, Guy Davis, George B. Thatcher and William Forman, Defendants in Error. Certified Copy of Bill of Exceptions, etc., upon Writs of Error to the United States District Court of the District of Nevada.

Filed March 14, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the U. S. Circuit Court of Appeals for the Ninth Circuit.*

No. 2952.

Guy Davis vs. Salt Lake No. 3.

JOSEPH RALPH,

Plaintiff in Error, etc.,

vs.

GEORGE A. COLE et al.,

Defendants in Error.

and

No. 2953.

Homestake vs. Midas and Evening Star.

JOSEPH RALPH,

Plaintiff in Error, etc.,

vs.

GEORGE A. COLE et al.,

Defendants in Error.

**Stipulation for Correction of Transcript of Record, etc.**

It is hereby stipulated and agreed by and between the parties to each of the above-entitled actions by their respective attorneys,—

That whereas the proceedings had and taken upon motion for new trial and also upon appeal and writ of error in each of the above-entitled actions have been erroneously transposed and copied by the clerk of the court below, those belonging to case No. 2952 appearing in the transcript and printed record for No. 2953, and those belonging in No. 2953 in the

transcript and printed record in No. 2952:

Now, therefore, it is agreed and stipulated, that all of said proceedings or any others transposed and printed in the certified transcripts and printed records to which they do not belong may be considered by the Court and counsel as incorporated in the particular record to which they belong. That all papers, steps and proceedings also which refer upon their face or in the caption as pertaining to the conflict or adverse of the Guy Davis claim against the Salt Lake No. 3 belong to and shall be considered as part of the transcript and record in case No. 2952 in this court, while all papers, steps and proceedings which refer upon their face or in the caption thereof to the conflict or adverse of the Homestake claim against the Midas and Evening Star claims belong to and shall be considered as part of the transcript and printed record in case No. 2953. That case No. 2952 in this court is properly case No. 1872 in the court below, and case No. 2953 is properly case No. 1873 in the court below, but wherever in the transcript and printed records the Guy Davis claim vs. the Salt Lake No. 3 appears, such papers belong and refer to No. 2952 in this court and to No. 1872 in the court below, notwithstanding the same may be numbered "1873" on the face, caption, or file-mark thereof. And wherever in the transcript and printed records the Homestake claim vs. the Midas and Evening Star appears, such papers belong and refer to case No. 2953 in this court and No. 1873 in the court below, although numbered "1872," on the face, captions, or file-mark thereof.

It is stipulated also that the clerk of the court below may make and file with the clerk of the Circuit Court of Appeals for the Ninth Circuit a supplementary certificate in each case, which shall be in the nature of a supplementary and amended return by him to the writs of error and appeals in said actions, and shall each recite the foregoing facts in substance, and certify the transposed records as belonging to the particular case to which they belong, by reference to the printed pages on which they appear. And such certificate shall be considered as sufficient for all the purposes of correction as if said causes had been remanded to the clerk of the court below for correction and recertification.

It is further stipulated that the clerk of the Circuit Court of Appeals may if he believe it proper and be so advised, after such amended and supplementary return and certificate from the clerk of the court below has been filed with him, rearrange and retranspose said several papers mentioned by pages in the supplementary return of the clerk below, so as to have all papers belonging to case No. 2952 bound together in one transcript, and those belonging to No. 2953 also bound together as one transcript, and so as to correct the original erroneous transposition and binding in accordance with the recertification.

It is further stipulated that the transcripts and printed records in cases No. 2952 and 2953 as now filed and printed may be considered as consolidated, for all purposes of cross-reference and citation in the briefs, arguments, hearing and decision by the

Court, and for the purpose of showing the steps and proceedings taken upon motion for new trial, appeal and writ of error in each case, the same as if said transcripts had been originally properly arranged, certified and printed in this court.

It is further stipulated that an order or orders may be entered by and in the U. S. Circuit Court of Appeals for the Ninth Circuit in each of the above-entitled actions in conformity with the foregoing stipulations, or any part or parts thereof as shall be deemed expedient by the Court. Or, if the Court deems necessary, then that the records be remanded in each of said cases for correction and recertification by the clerk of the court below.

It is further stipulated that it shall not be necessary to reprint volume 1 in each case in order to correct the transposition shown therein, unless the Court deems it necessary and so orders.

This 14th day of April, A. D. 1917.

P. G. ELLIS,

Attorney for Appellant and Plaintiff in Error.

GEO. B. THATCHER,
WM. FORMAN and
A. A. ROSENSHINE,

Attorneys for Appellee and Defendant in Error.

[Endorsed]: No. 2952. United States Circuit Court of Appeals for the Ninth Circuit. Joseph Ralph, Plaintiff in Error, vs. George A. Cole et al., Defendants in Error. Stipulation for Correction of Transcript of Record, etc. Filed Apr. 19, 1917. F. D. Monckton, Clerk.

*In the U. S. Circuit Court of Appeals for the Ninth Circuit.*

No. 2952.

Guy Davis vs. Salt Lake No. 3.

JOSEPH RALPH,

Plaintiff in Error, etc.,

vs.

GEORGE A. COLE et al.,

Defendants in Error.

and

No. 2953.

Homestake vs. Midas and E. Star.

JOSEPH RALPH,

Plaintiff in Error, etc.,

vs.

GEORGE A. COLE et al.,

Defendants in Error.

**Amended Certificate of Clerk United States District Court and Supplemental Return.**

I, T. J. Edwards, Clerk of the above-styled court, do hereby certify by way of amended and supplementary return to the writ of error and appeal in the above-entitled action, as follows:

1. That in case No. 2952, *supra,* the papers, records and proceedings contained in my certified transcript of the record dated March 12, 1917, and appearing in the printed record of the U. S. Circuit Court of Appeals in said action at pages 39 to 100, in-

clusive, 108 to first half of page 189, inclusive; 191 to first half 196, inclusive, describing or referring on their face, in the caption or filing-mark, to the Homestake Placer vs. the Midas and Evening Star lodes,—belong to and are properly part of the record in case No. 2953 in said U. S. Circuit Court of Appeals. Said record No. 2952 is properly case No. 1872 in the U. S. District Court.

2. That in case No. 2953, *supra,* all the papers, records and proceedings contained in my certified transcript of the record dated March 12, 1917, and appearing in the printed record of the U. S. Circuit Court of Appeals at pages 40 to 107, inclusive, 109 to 189, and 194 to 199, inclusive, and describing or referring upon their face, in the caption or filing-mark, to the Guy Davis claim against the Salt Lake No. 3,—belong to and are properly part of the record in case No. 2952 in said U. S. Circuit Court of Appeals. Said record No. 2953 is properly No. 1873 in the U. S. District Court.

3. That said papers may be rearranged by the Clerk of the Circuit Court of Appeals to correspond with this recertification, if he be so advised; but that this certificate to the extent of the correction made hereby, is intended as an amendment to the original certificate to the transcript and return to the writ of error and appeal in each case which is contained and printed in the printed records, as follows:

In No. 2952 at printed page 190;

In No. 2953 at printed pages 193–194.

I further certify that the original return, certified on the 6th day of March, 1917, was made strictly in

accordance with the *numbers* of the two cases, as presented by counsel, and so filed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at the Clerk's office of said U. S. District Court in Carson City, Nevada, on this the 18th day of April, A. D. 1917.

[Seal] T. J. EDWARDS,
Clerk of U. S. District Court for the District of Nevada.

ATTORNEY'S STATEMENT.

As the Clerk says within, he filed papers with reference to the docket numbers appearing on each paper when filed by the attorneys, and so included them in the transcripts.

But the origin of this transposition of docket numbers of the two cases date from the time of the trial below when the verdicts were returned with transposed numbering and from the certified copy of judgment in each case furnished by the clerk immediately after the trial, in which the numbers were also transposed.

Relying on the docket numbering of the verdicts and judgments in each case as correct which were prepared by the Clerk and court below, not by the attorneys, the subsequent papers as prepared by the undersigned corresponded in numbering with the verdict and judgment so furnished in each case. But to guard against any possible confusion in docket numbering, each of said papers prepared and filed by the undersigned, contained in the face thereof or in the captions, a specification of the mining claims involved in the

case to which such paper belonged, and in which it was to be filed.

April 20, 1917.

P. G. ELLIS,

Attorney for Appellant and Plaintiff in Error.

[Endorsed]: No. 2952. United States Circuit Court of Appeals, for the Ninth Circuit. Joseph Ralph, Plaintiff in Error and Appellant, vs. George A. Cole et al., Defendants in Error and Appellees. Amended Certificate of Clerk U. S. District Court and Supplementary Return. Filed Apr. 23, 1917. F. D. Monckton, Clerk.

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At a stated term, to wit, the October term, A. D. 1916, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the seventh day of May, in the year of our Lord one thousand nine hundred and seventeen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM H. HUNT, Circuit Judge.

Nos. 2952 and 2953.

JOSEPH RALPH,

Plaintiff in Error, and Appellant,

vs.

GEORGE A. COLE et al.,

Defendants in Error, and Appellees.

**Order Consolidating Causes for Hearing, etc.**

Pursuant to stipulation of counsel for the respective parties filed April 19, 1917, in the above-entitled causes, and it appearing that in the preparation and certification of the Transcripts of Record from the District Court for the District of Nevada, to this court, in the above-entitled causes, the proceedings had and taken upon motion for new trial and also upon appeal and writ of error in each of above-entitled actions have been erroneously transposed and copied by the clerk of said District Court, those belonging to case No. 2952 appearing in the certified typewritten Transcript of Record and printed Transcript of Record for Cause No. 2953, and those belonging in cause No. 2953 in the certified typewritten Transcript of Record and printed Transcript of Record in cause No. 2952;

Therefore, it is hereby ORDERED that all of said proceedings or any others transposed and printed in the certified typewritten Transcripts of Record and printed Transcripts of Record to which they do not belong may be considered by the Court and counsel for respective parties as incorporated in the particular Transcripts of Record to which they belong; that all papers, steps and proceedings, which refer upon their face or in the caption as pertaining to the conflict or adverse of the Guy Davis claim against the Salt Lake No. 3 belong to and shall be considered as part of the Transcript and record in case No. 2952 in this Court while all papers and proceedings which refer upon their face or in the caption thereof to the

conflict or adverse of the Homestake claim against the Midas and Evening Star claims belong to and shall be considered as part of the certified typewritten transcript and printed transcript of record in case No. 2953 in this court; that case No. 2952 in this court is properly case No. 1872 in said District Court, and case No. 2953 is properly case No. 1873 in said District Court, but wherever in the certified typewritten Transcript of Record and printed Transcript of Record the Guy Davis Claim vs. the Salt Lake No. 3 appears, such papers belong and refer to No. 2952 in this court and to No. 1872 in said District Court, notwithstanding the same may be numbered "1873" on the face, caption or file-mark thereof; and wherever in the certified typewritten Transcript of Record and the printed Transcript of Record the Homestake Claim vs. The Midas and Evening Star appears, such papers belong and refer to case No. 2953 in this court and No. 1873 in the said District Court, although numbered "1872," on the face, captions, or file-marks thereof;

It is FURTHER ORDERED that the Clerk of the said District Court may make and file with the clerk of this court a supplementary certificate in each case which shall be in the nature of a supplementary and amended return by the clerk of said District Court to the writs of error and appeals in the said actions, and shall each recite the foregoing facts in substance, and certify the transposed records as belonging to the particular case to which they belong, by reference to the printed pages of the Transcripts of Record on which they appear;

and that such certification shall be considered as sufficient for all the purposes of correction as if said causes had been remanded to the clerk of said District Court for correction and re-certification.

It is FURTHER ORDERED that the certified typewritten Transcript of Record and the printed Transcript of Record in cases Nos. 2952 and 2953 as now filed and printed, may be considered as consolidated for all purposes of cross-reference and citation in the briefs, arguments, hearing and decision by the Court, and for the purpose of showing the steps and proceedings taken upon motion for a new trial, appeal and writ of error in each of the above-entitled causes, the same as if the said transcripts had been originally properly arranged, certified and printed in this court.

[Endorsed]: Printed Transcript of Record. Filed March 30, 1917. F. D. Monckton, Clerk.

No. 2952

# United States
# Circuit Court of Appeals
## For the Ninth Circuit.

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JOSEPH RALPH,
Appellant and Plaintiff in Error,

vs.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER, and WILLIAM FORMAN,
Appellees and Defendants in Error.

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**Upon Appeal to and Writ of Error from the United States District Court of the District of Nevada.**

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**PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.**

At a stated term, to wit, the October Term, A. D. 1916, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Monday, the fourteenth day of May, in the year of our Lord one thousand nine hundred and seventeen: Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; The Honorable ERSKINE M. ROSS, Circuit Judge; The Honorable WILLIAM H. HUNT, Circuit Judge.

No. 2952.

JOSEPH RALPH,
Plaintiff in Error and Appellant,
vs.
GEORGE A. COLE et al.,
Defendants in Error and Appellees.

No. 2953.

JOSEPH RALPH,
Plaintiff in Error and Appellant,
vs.
GEORGE A. COLE et al.,
Defendants in Error and Appellees.

**Order of Submission.**

ORDERED, above-entitled causes argued by Mr. George B. Thatcher, counsel for the appellees and defendants in error, and by Mr. P. G. Ellis, counsel

for the appellant and plaintiff in error, and submitted to the Court for consideration and decision.

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At a stated term, to wit, the October term, A. D. 1917, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Friday, the eighth day of March, in the year of our Lord one thousand nine hundred and eighteen: Present: The Honorable ERSKINE M. ROSS, Circuit Judge, Presiding; The Honorable WILLIAM W. MORROW, Circuit Judge; The Honorable WILLIAM H. HUNT, Circuit Judge.

Nos. 2952 and 2953.

JOSEPH RALPH,
Plaintiff in Error and Appellant,
vs.
GEORGE A. COLE et al.,
Defendants in Error and Appellees.

**Order Directing Filing of Opinion, Concurring Opinion and Dissenting Opinion and Filing and Recording of Decrees.**

By direction of the Honorable Erskine M. Ross, and William H. Hunt, Circuit Judges, before whom, together with the Honorable William B. Gilbert, Circuit Judge, the causes were heard, ORDERED that the typewritten opinion and concur-

ring opinion this day rendered by this Court in the above-entitled causes be forthwith filed by the clerk and that judgment be filed and recorded in the minutes of this court in said causes in accordance with said opinion and concurring opinion.

By direction of the Honorable William B. Gilbert, Circuit Judge, ORDERED that the dissenting opinion written by him, and this day rendered in said cause, be forthwith filed by the clerk.

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*In the United States Circuit Court of Appeals for the Ninth Circuit.*

No. 2952.

JOSEPH RALPH,
Appellant and Plaintiff in Error,

vs.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE P. THATCHER, and WILLIAM FORMAN,
Appellees and Defendants in Error,

and

No. 2953.

JOSEPH RALPH,
Appellant and Plaintiff in Error,

vs.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE P. THATCHER, and WILLIAM FORMAN,
Appellees and Defendants in Error.

**Opinion U. S. Circuit Court of Appeals.**

Upon Appeals from and Writs of Error to the United States District Court for the District of Nevada.

Before GILBERT, ROSS and HUNT, Circuit Judges.

The basis of these actions were contests which arose in the United States Land Office at Elko, Nevada, under the provisions of sections 2325 and 2326 of the Revised Statutes, concerning certain mining ground situated in the Battle Mountain Mining District in Lander County, of that State.

In the case first above entitled and here numbered 2952, the present plaintiff in error filed an application in that land office for a patent to various specifically described lode claims alleged to have been theretofore located by his predecessors in interest, and among them one called and known as Salt Lake No. 3 Lode, against which application, in so far as concerned the last-mentioned claim, one or more of the present defendants in error and the predecessors in interest of the others filed in the land office a protest and adverse claim, basing their alleged rights upon a placer claim to substantially the same ground, called Guy Davis Placer, located September 6, 1913—years after the location under which the plaintiff in error claims.

Within the time prescribed by section 2326 of the Revised Statutes one or more of the present defendants in error and the predecessors in interest of the others commenced in the District Court of the

Third Judicial District of the State of Nevada in and for the County of Lander, the first of the present actions against the present plaintiff in error, alleging in substance as follows:

1. That ever since the —— day of September, 1913, plaintiffs and their predecessors in interest were the owners of and in the actual possession and occupancy of the Guy Davis Placer Mining Claim, 1500 feet in length by 600 feet in width, said claim being situated in the Battle Mountain Mining District, County of Lander, State of Nevada, and plaintiffs and their predecessors in interest ever since have been and now are the owners of and entitled to the possession of said mining claim.

2. That plaintiffs are the owners of and entitled to the possession of said Guy Davis Placer Mining Claim by virtue of a full compliance with the local laws, rules, and customs of miners in said mining district, the laws of the United States, and the State of Nevada relating to mining claims, and by actual prior possession, location and discovery thereof by these plaintiffs, their grantors, and predecessors in interest.

3. That on or about August 1, 1914, the defendant wrongfully and without right entered certain portions of said Guy Davis placer mining claim, and on or about said day said defendant filed in the United States Land Office at Elko, Nevada, diagram and field-notes of the Salt Lake No. 3 Lode, and also the John John and other lodes, and filed therewith an application for patent of the United States for said Salt Lake No. 3 Lode, said applica-

tion being designated as M. A. No. 01544, Min. Sur. No. 4175, and caused the Register of said land office to give notice of said application for patent by publication, as required by law, in the "Battle Mountain Scout," a newspaper published in said mining district at Battle Mountain, Nevada, the first publication thereof being made on the 1st day of August, 1914, and in said application said defendant did apply for patent of all of said Salt Lake No. 3 Lode, and more particularly described as follows (giving specific description); that by said application for patent and by said wrongful entry aforesaid, defendant wrongfully and without right entered said Guy Davis Placer, and practically all of that part of the Guy Davis Placer which is intersected by the exterior lines of said Sur. No. 4175, as shown by plat marked Exhibit "B," filed on the 24th day of September, 1914, in the Land Office of the United States at Elko, Nevada, with the adverse claim of the present defendants in error against an entry of said Min. Sur. No. 4175, Mineral Application No. 01544 for patent, said ground so intersected being described as follows (giving specific description), containing 19.86 acres.

4. That said adverse claim was filed in the said Land Office within the period of 60 days of notice of said application for patent to said Salt Lake No. 3 Lode, and that the present action was commenced before the expiration of 30 days after the filing of the said adverse claim, and is brought in support thereof.

The prayer of the complaint is for judgment

against the defendant to the action, for the recovery of the possession of said Guy Davis Placer Claim, and for a decree that the plaintiffs are the owners, in the possession, and entitled to the possession, of said placer claim, and for the sum of five hundred dollars alleged to have been expended in the preparation of said adverse claim, and for the sum of five hundred dollars as damages.

In his answer the defendant to the action denies that the plaintiffs or either of them, or that their predecessors in interest, are or ever were the owners of or in actual possession of or entitled to the possession of any portion of the "so-called" Guy Davis Placer Mining Claim, or to any of the ground embraced within its side-lines, by virtue of a full compliance with local laws, rules or customs of miners in said mining district, or the laws of the United States or the laws of Nevada, relating to mining claims, or by actual prior possession, location, or discovery by plaintiffs, their grantors, or predecessors in interest, or anyone, or at all.

The defendant further denies that on the 1st day of August, 1914, or at any other time or at all, he or his predecessors in interest or anyone on his behalf, wrongfully and without right entered certain portions of said "so-called" Guy Davis Placer Mining Claim, but admitted that on said date he filed in the United States Land Office at Elko, Nevada, an application for patent to the said Salt Lake No. 3 Lode Claim, together with a like application for patents to the John John and other lodes, and with a diagram and notes of the surveys, and caused the

Register of the said Land Office to give the required notice of such applications, and admitted that the first publication thereof was made on the 1st day of August, 1914, and admitted that such application covered all of the ground embraced within the side-lines of said Salt Lake No. 3 Lode as alleged in the complaint, but denied that any of the said acts were without right, but, on the contrary, alleged that all of them were rightful and in accordance with law.

The defendant further denies that by his said application for patent, or by said entry, or in any other way, he wrongfully or without right entered upon any of the portion of the "so-called" Guy Davis Placer, as set forth in the complaint, but, on the contrary, alleges that he is and at all the times mentioned was the owner of and entitled to the possession of all of the ground covered by the adverse claim of the plaintiffs. And by his answer the defendant as a further defense alleges:

1. That the plaintiffs and each of them are and were at all the times mentioned in the complaint residents and citizens of the State of Nevada and the defendant a resident and citizen of the State of Utah, and over the age of twenty-one years.

2. That the amount involved in the action is over three thousand dollars, exclusive of interest and costs.

3. That on or about February 2, 1897, the grantors of the defendant, then being citizens of the United States and over the age of 21 years, were, and ever since that date the defendant and his said grantors have been, the owners, in the actual possession of and entitled to the possession of the said

Salt Lake No. 3 Lode Mining Claim.

4. That he has and claims the legal right to occupy and possess said Salt Lake No. 3 Lode Mining Claim, by virtue of a full compliance with the local laws, rules, and customs of miners in said mining district, the laws of the United States, and of said State of Nevada, by pre-emption, purchase, and subsequent transfer, and by actual prior possession as a lode mining claim located upon the public domain of the United States.

5. That on or about February 2, 1897, the grantors and predecessors in interest of the defendant, being then citizens of the United States, entered upon its then unappropriated public domain and located the Salt Lake No. 3 Lode Mining Claim by then and there marking the boundaries thereof as required by law, and ever since said date the defendant and his grantors were, until September 5, 1913, in the quiet and undisputed possession of said lode mining claim, and during all of said time and for more than sixteen years, the defendant and his grantors and predecessors in interest were in the open, notorious, adverse and undisputed possession of said mining claim, holding, working, and living thereon; that on or about September 6, 1913, while said claim was so being held, owned, occupied, and possessed by the defendant, his grantors, and predecessors, and with full knowledge, the plaintiffs and their grantors wrongfully and without authority entered upon said lode mining claim, without the knowledge or consent of the said defendant or his grantors, and attempted to locate upon the ground embraced within the said Salt Lake No. 3 Lode the

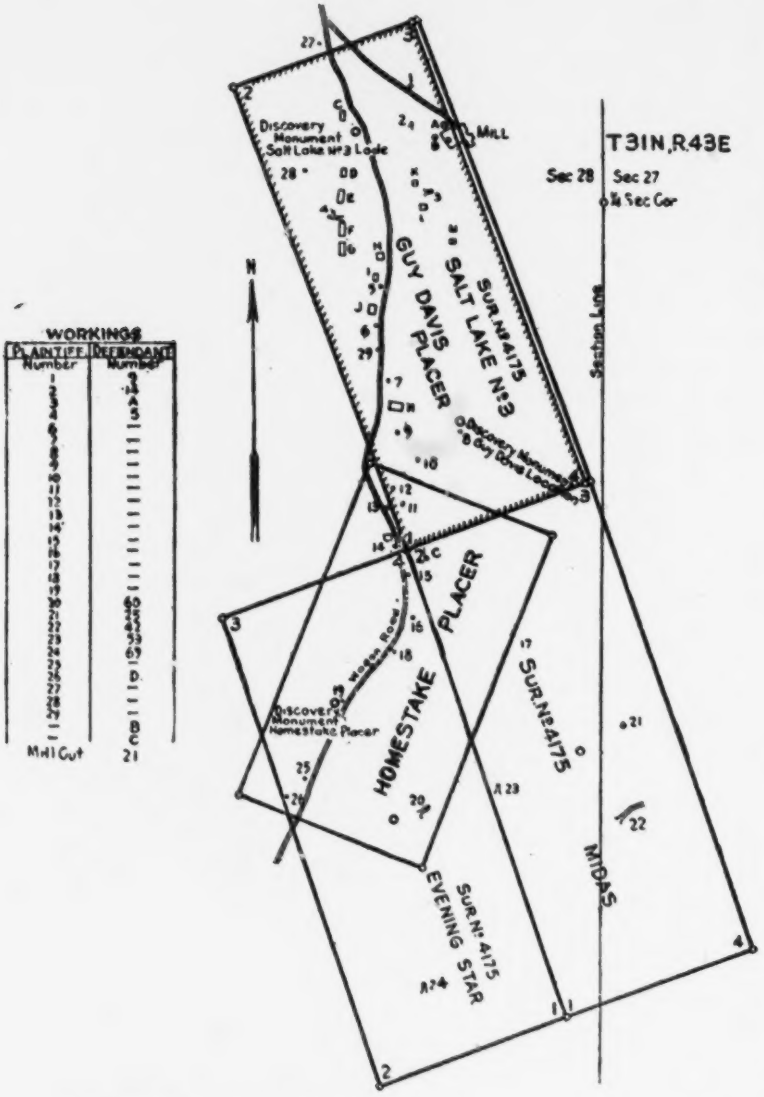
Guy Davis Placer claim; that by reason of the premises alleged the defendant has become and is now the owner and holder of the said ground and the whole thereof, and that the said attempted location of the plaintiffs and their grantors was and is wholly void and of no effect.

The prayer of the answer is that the plaintiffs take nothing upon their complaint, that judgment be given defendant for the possession of said Salt Lake No. 3 Lode Mining Claim, and for costs of suit.

The reply of the plaintiffs put in issue the affirmative allegations of the answer.

In the second of the suits above entitled, being No. 2953, the pleadings are in all respects similar, except as to the property in controversy. In that action the patents applied for by the defendant to the action were for two lode claims, named, respectively, Midas and Evening Star, across the surface of which the plaintiffs and their predecessors in interest located a placer mining claim called Homestake Placer, based upon which claim they filed in the Land Office a protest against the application of the defendant to the action and asserted their adverse claim to such placer, and in pursuance of which they filed the complaint in the District Court of the State of Nevada, in and for Lander County, involved in the second of the actions above entitled.

As illustrative of the respective claims of the parties, the following diagram is inserted, together with some representations found in the record of the character of the surrounding ground:




MAP OF MINING CLAIMS INVOLVED
COMPILED FROM
PLAINTIFF'S EXHIBIT "A", DEFENDANT'S EXHIBIT "

Showing Topography, Contour of Bed Rock, and Evident Depth of Soil at Different Points About the Buildings on Salt Lake No. 3. *Looking South.*

Copper Canyon. See Exhibit No. 13.

The two actions were by stipulation of the respective parties thereto consolidated and tried together in the court below upon the same evidence, and resulted in a general verdict in each case in favor of the plaintiffs, together with a special verdict to the effect that there was no valid discovery of mineral within either of the lode claims relied on by the defendant to the actions, prior to the entry on the ground embraced by them on the part of the plaintiffs and their grantors, upon which verdicts respective judgments were entered in favor of the plaintiffs for the possession of the ground embraced by the respective placer claims.

From those judgments the respective appeals were taken, as well as from the order denying a new trial in each case—the plaintiff in error also suing out a writ of error in each of the cases.

ROSS, Circuit Judge, after making the foregoing statement:

The act of Congress of July 26, 1866 (14 Stats. 251), in which provision was made for contests of rival mining claims to mining ground by the filing of adverse claims in the land office and their subsequent trial in a court of competent jurisdiction, was subsequently made more specific by the act of May 10, 1872 (17 Stats. 91), and from that carried into the Revised Statutes as sections 2325 and 2326. An amendment to the latter section was made by act approved March 3, 1881 (21 Stats. 505), by which it was declared "that if in any action brought pursuant to section twenty-three hundred and twenty-six of the Revised Statutes, title to the ground in

controversy shall not be established by either party, the jury shall so find and judgment shall be entered according to the verdict."

Referring to the latter act in the case of Perego vs. Dodge, 163 U. S. 160, 167, 168, the Supreme Court said that it did not regard it "as intended or requiring all suits under section 2326 to be actions at law and to be tried by a jury," saying:

> "We do not think the intention of this act was to change the methods of trial. Its manifest object was to provide for an adjudication, in the case supposed, that neither party was entitled to the property, so that the applicant could not go forward with his proceedings in the land office simply because the adverse claimant had failed to make out his case, if he had also failed. In other words, the duty was imposed on the Court to enter such judgment or decree as would evidence that the applicant had not established the right of possession, and was for that reason not entitled to a patent. The whole proceeding is merely in aid of the land department, and the object of the amendment was to secure that aid as much in cases where both parties failed to establish title as where judgment was rendered in favor of either, and while the finding by a jury is referred to, we think that, where the adverse claimant chooses to proceed by bill to quiet title, and as between him and the applicant for the patent neither is found entitled to relief, the Court can render a decree to that effect,

just as it would render judgment on a verdict if the action were at law. If Congress had intended to provide that litigation of this sort must be at law, or must invariably be tried by a jury, it would have said so. There is nothing to indicate the intention thus to circumscribe resort to the accustomed modes of procedure or to prevent the parties from submitting the determination of their controversies to the Court."

By section 2325 the applicant for a patent to a mining claim is required to file with his application the evidence of his right to it, and the Register of the Land Office is thereupon required to cause notice of such application to be published in a prescribed way for 60 days, during which time any adverse claimant to any part of the location described in the application is required to file an adverse claim in the Land Office. The next section—2326—is as follows:

"Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within

thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the register of the land office, together with the certificate of the surveyor-general that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall be certified by the register to the Commissioner of the General Land Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees, and file the certificate and description by the surveyor-general, whereupon the register shall certify the proceedings and judgment-roll to the Commissioner of the Gen-

eral Land Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining claim to any person whatever."

It will be seen from the express language of this statute that the question so to be transferred from the land office to a court of competent jurisdiction for decision is, that of the right of possession of the mining ground respecting which the contest has arisen in the land office—the title to the ground of course remaining in the Government for disposal in accordance with the judgment of the Court and after compliance with all the other requirements of the statute. No form of action is prescribed by the statute, and no court other than one of competent jurisdiction is designated.

Prior to the passage of any mining laws by Congress, both the Land Department and the courts always acted upon the rule that all mineral locations were to be governed by the local laws, rules, and customs in force at the time of the location. Glacier Mining Co. v. Willis, 127 U. S. 471, 482, and cases there cited. That such practice was intended by Congress to be continued is clearly shown by the express provisions of section 2 of the Act of July 26, 1866, (14 Stats. 251), and by section 2332 of the Revised Statutes, the former of which provides, among other things, that "whenever any person or association of persons claims a vein or lode of quartz or other rock in place bearing gold, silver,

cinnabar, or copper, having previously occupied and improved the same according to the local customs or rules of miners in the district where the same are situated, and having expended in actual labor and improvements thereon an amount of not less than $1,000, and in regard to whose possession there is no controversy or opposing claim, it shall, and may be lawful for such claimant or association of claimants to file in the local land office a diagram of the same so extended laterally or otherwise as to conform to the local laws, customs, and usages of miners, and to enter such tract and receive a patent therefor granting such mine," etc.; and the second of which, to wit, sec. 2332 of the Revised Statutes, declares, among other things, that "where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim."

Looking at the scheme presented by sections 2325 and 2326 of the Revised Statutes, said the Supreme Court in Richmond Mining Co. v. Rose, 114 U. S. 576, 584, "and which relates solely to securing patents for mining claims, it is apparent that the law intended, in every instance where there was a possibility that one of these claims conflicted with another, to give opportunity to have the conflict de-

cided by a judicial tribunal before the rights of the parties were foreclosed or embarrassed by the issue of a patent to either claimant. The wisdom of this is apparent when we consider its effect upon the value of the patent, which is thereby rendered conclusive as to all rights which could have been asserted in this proceeding, and that it enabled this to be done in the form of an action in a court of the vicinage, where the witnesses could be produced, and a jury, largely of miners, could pass upon the rights of the parties under instruction as to the law from the Court. It is in full accord with this purpose that the law should declare, as it does, that when this contest is inaugurated the land officers shall proceed no further until the Court had decided, and that they shall then be governed by that decision; to which end a copy of the record is to be filed in their office. They have no further act of judgment to exercise. If the Court decides for one party or the other, the Land Department is bound by the decision. If it decides that neither party has established a right to the mine or any part of it, this is equally binding as the case then stands. With all this these officers have no right to interfere. After the decision they are governed by it. Before the decision, once the proceeding is initiated, their function is suspended."

In the subsequent case of Iron Silver Mining Co. v. Campbell, 135 U. S. 286 299, the same Court, in speaking of the same statute, said:

"The purpose of the statute seems to be that where there are two claimants to the same

mine, neither of whom has yet acquired the title from the Government, they shall bring their respective claims to the same property, in the manner prescribed in the statute, before some judicial tribunal located in the neighborhood where the property is, and that the result of this judicial investigation shall govern the action of the officers of the Land Department in determining which of these claimants shall have the patent, the final evidence of title, from the Government."

Neither the specific courts authorized by sec. 2326 to try the right of possession of the ground to which conflicting claims arise in the land office, nor the character of such actions being designated by the statute, different rulings were made by the Courts, many holding, as was done by a number in this circuit—Shoshone Mining Co. v. Rutter et al., 87 Fed. 801, Doe v. Waterloo Mining Co., 43 Fed. 219, and other cases there referred to—that such actions were equitable in their nature, and that the Federal courts had jurisdiction of them regardless of the citizenship of the parties; but, on appeal of the case of Shoshone Mining Co. v. Rutter et al.; reported in 177 U. S. 505, the Supreme Court, while conceding that the question was not free from doubt, held that inasmuch "as the 'adverse suit' to determine the right of possession may not involve any question as to the construction or effect of the Constitution or laws of the United States, but may present simply a question of fact as to the time of the discovery of mineral, the location of the claim on the

ground, or a determination of the meaning and effect of certain local rules and customs prescribed by the miners of the district, or the effect of State statutes, it would seem to follow that it is not one which necessarily arises under the Constitution and laws of the United States," and accordingly concluded that while such suits may sometimes so present questions arising under the Constitution and laws of the United States that the federal courts will have jurisdiction regardless of the citizenship of the parties, yet the mere fact that a suit is an adverse suit authorized by the statutes of the United States is not in and of itself sufficient to vest such jurisdiction, and reversed the judgment appealed from.

From the pleadings in the present cases it is plain that *they* were actions at law in which the sole issue was the right of possession of the respective mining claims. Being such, the parties were of right entitled to a jury trial; besides which it appears from the records that they expressly stipulated for such a trial in the court below, to which Court the cases were, on motion of the defendant thereto, transferred from the state court in which they were commenced, because of the diverse citizenship of the parties.

It is apparent from what has already been said that the issue in the cases depended for its determination upon the above cited provisions of the statutes of the United States and upon the local laws, rules, and customs of the State and district where the

ground in dispute is situate, applied to the facts of the case.

A statute of limitations of Nevada regarding mining claims originally enacted as early as November 21, 1861, as amended in 1867, reads as follows:

> "3706. Sec. 4. No action for the recovery of mining claims, or for the recovery of the possession thereof, shall be maintained, usless it appear that the plaintiff or those through or from whom he claims, were seized or possessed of such mining claim, or were the owners thereof, according to the laws and customs of the district embracing the same, within two years before the commencement of such action. Occupation and adverse possession of a mining claim shall consist in holding and working the same, in the usual and customary mode of holding and working similar claims in the vicinity thereof. All the provisions of this act, which apply to other real estate, so far as applicable, shall be deemed to include and apply to mining claims; *provided,* that in such application 'two years' shall be held to be the period intended whenever the term 'five years' is used; *and, provided further,* that when the terms 'legal title' or 'title' are used they shall be held to include title acquired by location or occupation, according to the usages, laws, and customs of the district embracing the claim." (Cutting's Compiled Laws of Nevada, 1861–1900.)

By virtue of that statute and of the provisions of section 2332 of the Revised Statutes, the defend-

ant to these actions in his answer to the complaints set up, among other defenses, that on or about February 2, 1897, the grantors of the defendant, being then citizens of the United States, entered upon its then unappropriated public domain and located the Salt Lake No. 3 Lode Mining Claim, by then and there marking the boundaries thereof as required by law, from which time the defendant and his grantors and predecessors in interest remained in the open, notorious, adverse, and undisputed possession of the said lode mining claim, holding, working, and living thereon; that on or about September 6, 1913, while the said claim was so being held, owned, occupied, and possessed by the defendant, the plaintiffs and their grantors, with full knowledge, wrongfully and without authority entered upon said lode mining claim, without the knowledge or consent of the said defendant, and attempted to locate upon the ground embraced within the said Salt Lake No. 3 Lode the Guy Davis placer claim, which attempted location of the plaintiffs and their grantors was and is wholly void and of no effect, and that by reason of the premises alleged the defendant became and now is the owner and holder of the said Salt Lake No. 3 Lode Claim and the whole of the ground embraced thereby.

In support of that plea of the statute of limitations the defendant to the actions introduced such evidence tending to support it and going to show that the Salt Lake No. 3, Midas, and Evening Star were three of a dozen or more neighboring lode claims known as the Copper Canyon group of mines

that were located by the predecessors in interest of the plaintiff in error may years before the entry upon the same by any of the defendants in error or any of their predecessors in interest, and that all of such lode claims have been duly patented by the Government except the three here in contest. Evidence was given that the Salt Lake No. 3 was located by two men named, respectively, Clive and Johnson, on the 2d day of February, 1897, and the Midas and Evening Star by Joseph and William T. Jurey, March 27th, 1907, and that the notices of location thereof were duly recorded and recited on their face the discovery of a vein within the ground so located. Evidence was given of the performance of the required annual assessment work on each of the lode claims in dispute by the locators thereof and their successors in interest, and tending to show their continued adverse occupancy by the successors in interest of the original locators and the doing from time to time of a large amount of work thereon—there having also been erected on the Salt Lake No. 3 claim, as will be seen from the photographs that have been inserted, a mill and other buildings, in one of which houses a watchman of the properties was at all times kept during the times when active work thereon was suspended. Evidence was also given on the part of the plaintiff in error tending to show that prior to the entry upon any of the ground here in controversy by the defendants in error or any of their predecessors in interest, the plaintiff in error or his predecessors in interest had discovered in the gravel of the nar-

row canyon that comes down from the hills placer gold, and that that discovery was the cause of an inrush of people, among whom were one or more of the present defendants in error and the predecessors in interest of the others of them, the latter of whom proceeded to make the placer locations Guy Davis and Homestake on the ground previously located by the predecessors in interest of the plaintiff in error.

The record shows without dispute that the sole basis of such intrusion upon the actual possession of the plaintiff in error was and is the contention that no discovery of a lode or vein was ever made within the boundaries of either the Salt Lake No. 3, Midas, or Evening Star Lode claims.

That discovery of a vein or lode within its boundaries is essential to the validity of any lode claim is beyond question, and the law is well settled that at any time previous to such discovery ground within the boundaries of such a claim, although within the actual possession of the claimant, is open to the entry of others by any *legal* means for the purpose of locating it under the mining laws. See the numerous cases cited in the recent case of Consolidated Mut. Oil. Co. v. United States, 245 Fed. ——.

In the present cases, however, the record shows that there was much evidence introduced on the part of the plaintiff in error tending to show not only that there was such a discovery within the boundaries of each of the lode claims here in controversy years before the entries thereon and the placer locations under which the defendants in

error claim, but that for many years those lode claims had been possessed, worked, and claims as lode mining ground adversely to all the world except the Government. There was therefore ample basis in the evidence for some of the instructions to the jury requested by the plaintiff in error on the question of such adverse holding by him and his predecessors in interest, all of which the Court below refused to give, to which ruling exceptions were duly reserved. That error was thereby committed requiring a reversal of the judgments appealed from, we think clear. We need only cite the case of The 420 Mining Co. v. The Bullion Mining Co., 9 Nev. 241, where the Supreme Court of Nevada said:

> "To avoid the statute of limitations, it is claimed by appellant that this action is brought under an act of Congress; and hence, that the limitations provided for by the statute of this state do not apply. The act of Congress provides that where an adverse claim is filed within the time and in the manner specified in said act, certain proceedings 'shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment, and a failure to do so shall

be a waiver of his adverse claim.' The act further provides that 'after such judgment shall have been rendered, the party entitled to the possession of the claim * * * may * * * file a certified copy of the judgment-roll with the register of the land office,' and upon compliance with this and other provisions in said act, 'a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the Court, to rightly possess.' (U. S. Stats. 1872, 91 sec. 7.) Congress did not, by the passage of this act, or by the acts passed July 28, 1866, and July 9, 1870, confer any additional jurisdiction upon the state courts. The object of the law, as we understand it, was to require parties protesting against the issuance of a patent to go into the state courts of competent jurisdiction, and institute such proceedings as they might under the different forms of action, therein allowed, elect; and there try 'the rights of possession' to such claim and have the question determined. The acts of Congress do not attempt to confer any jurisdiction not already possessed by the state courts; nor to prescribe a different form of action. If the parties protesting are in possession of the ground in dispute, they can bring their action under sec. 256 of the Civil Practice Act (Stats. 1869, 239), or, if they have been ousted from the possession, they could bring their action of ejectment; and in either action 'the rights of possession' to such claim

could be finally settled and determined. We are of opinion that when the action is brought, whatever may be its character, it must be tried by the same rules, governed by the same principles, and controlled by the same statutes that apply to such actions in our state courts, irrespective of the acts of Congress. The fact, as found by the Court, that the defendant had been in the actual, exclusive and uninterrupted occupation and possession of all the mining ground in dispute, claiming title thereto adversely to plaintiff, for more than seven years prior to the commencement of this suit, constitutes a complete bar to this action. 1 Comp. Laws, 243, secs. 4, 5. To have maintained any action in our state courts 'to try the rights of possession' to a mining claim, the plaintiff must have shown that it, or those through or from whom it claims, 'were seized or possessed of such mining claim, or were the owners thereof, according to the laws and customs of the district embracing the same, within two years before the commencement of such action.' 1 Comp. L. 1019, sec. 4."

Besides the testimony of the witnesses regarding the essential discovery within each of the lode claims and regarding the adverse holding and working of the disputed ground by the plaintiff in error and his predecessors in interest for much more than the period prescribed by the statute of limitations, each of the notices of location of the lode claims in controversy, duly recorded, expressly recited, as has

been said, the fact of such discovery. Such recital we held in the case of Vogel v. Warsing, 146 Fed. 949, 951, "creates a presumption of discovery of mineral and of a valid location." See, also, Harris v. Equator Mining & Smelting Co., 8 Fed. 853; Cheesman v. Shreeve, 40 Fed. 791; Cheesman v. Hart, 42 Fed. 98.

The appeals are dismissed, and in each case the judgment is reversed and the cause remanded to the court below for a new trial.

[Endorsed]: Opinion. Filed March 8, 1918. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

**Concurring Opinion of Hunt, C. J.**

HUNT, Circuit Judge, Concurring:

Among other requests for instruction upon adverse possession, the defendant asked the Court to charge as follows:

> "The Court instructs the jury that if you find from the evidence that the defendant and his grantors had entered and held possession of the lode mining claims involved in these actions and worked the same in the usual and customary way in the vicinity thereof for a period of two years prior to the making of the placer locations of the plaintiffs, then the law presumes in aid thereof that all the acts necessary to a valid location of said lode mining claims had been done and performed at the time of such lode mining locations, and that such possession (having the legal effect of a location under the law) is sufficient to give the defend-

ant's grantors a lawful right to the possession of said mining claims, if kept alive as required by law, as against the subsequent placer locations of the plaintiff's grantors."

The Court, however, entirely disregarded the question of adverse possession, and said: "In the first place, I don't think there is any adverse possession in the case, so the instructions based on adverse possession will not be given; I exclude them, not because they do not correctly state the law, but simply because I regard them as unnecessary." Thus the jury were not advised that any presumption existed by reason of long continued possession, claim and working or improvement by defendant, and the Court expressly confined the issues to the question of a valid discovery by the lode locators prior to the time when the placer locators went on the ground. Refusal to consider and instruct upon the question of adverse possession I think was material error. Open and exclusive possession had been in defendant or his predecessors for years. It was accepted that location notices in compliance with law had been posted and filed; that the annual assessment work had been done, and that much additional expenditure was made upon the claims before the placer locations were filed. Witnesses also testified to facts tending to show the existence of veins and lodes at the time of original location; and the general mineral character of the country was not disputed. This evidence made a strong *prima facie* conclusion as against the placer claimants in favor of discovery by defendant. It established a presumption whereby the truth of a discovery was to

be assumed, and the legal consequences attaching to it, and the burden thrown upon the plaintiff by reason of the presumption, should have been explained to the jury. As a general rule, the benefit of such a presumption is specially important in a mining case, for it might very properly, in a case otherwise difficult to solve, save the rights of a mine owner as against one who, after many years have gone by, seeks to maintain another location, contending that there never was a discovery by the original locator. Common experience tells us that death or inability to gather witnesses often makes it practically impossible to prove as an affirmative physical fact an original discovery of mineral at the time of location. The presumption should serve as evidence in favor of the claimant until his opponent has produced evidence which overthrows the presumption. It seems to me that any other rule would imperil the value of unpatented mines located a long time ago and conveyed by the locators to *bona fide* purchasers who may have expended large sums in development. In commenting upon the reasonableness of the presumption in favor of discovery where there has been staking off, location filing, possession for years and prosecution of work, Judge Philips, in Cheesman v. Hart, 42 Fed. 98, said:

> "After this he sells to an honest man, and passes out of view or dies. All the subsequent workings go to show the existence of a lode or vein on the claim of more or less importance. Can it be that after the lapse of many years the assignee must lose his claim because of inability

to produce the lost or the dead, and prove affirmatively an actual, visible discovery by the original locator of ore in place where he dug? Possibly the charge in this particular would have been more theoretically correct had the court told the jury that it was not necessary that defendants should establish such discovery by witnesses to the physical fact at the time. But the same might be inferred from the certificate of location, the manifestations of workings done, the long tenure of the claim, the development of a vein on the claim by subsequent working, and from all the surrounding circumstances."

[Endorsed]: Concurring Opinion. Filed March 8, 1918. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

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*In the United States Circuit Court of Appeals for the Ninth Circuit.*

JOSEPH RALPH

vs.

GEORGE A. COLE et al.

**Dissenting Opinion of Gilbert, C. J.**

GILBERT, Circuit Judge, Dissenting:

The Court below properly submitted to the jury the question whether a valid discovery had been made by the lode locators prior to the placer locations and discoveries, and instructed the jury that the locators of the placer claim had each performed

all of the acts necessary and required by the statutes of the United States and the laws of the State of Nevada in the discovery and location of a placer claim. No exception was taken to that instruction. Again, the Court said to the jury:

> "A competent person may go on the public domain of the United States with the *bona fide* intention of making a discovery of mineral, and may define the boundaries of his claim by means of notices and monuments thereon, and so long as such locator is in the actual possession of the location so defined, endeavoring to make a discovery, he will be entitled to the peaceable possession of such claim, as against one entering thereon as a trespasser; but in the absence of a discovery should he permit another competent person to go peaceably upon the claim, and should such person make a valid discovery of mineral, and locate the same, and in all things comply with the requirements as to monumenting, posting notices, and recordation, then such subsequent locator would acquire title to such claim so located, subject only to the paramount title of the United States."

The jury returned three special verdicts finding that no valid discovery of a lode within the limits of either of the lode claims was made by the defendant or his grantors prior to the dates when the placer claims were located.

In the opinion of the majority of this Court the judgment of the Court below is to be reversed for the refusal of the trial Court to give a requested

instruction on the subject of adverse possession. The statute of Nevada fixes a period of two years as necessary for title by adverse possession and provides that the "occupation and adverse possession of a mining claim shall consist in holding and working the same in the usual and customary mode of holding and working similar claims in the vicinity thereof." It is by that statute that the defendants' claim of adverse possession must be measured. The defendant had pleaded adverse possession, but not in the language of the statute. He alleged only that he and his predecessors in interest had been, for the designated period of time, in the "open, notorious, adverse and undisputed possession of said mining claim, holding, living and working upon said lode mining claim." The requested instruction, which was refused, was framed in the language of the statute of limitations of Nevada. It was refused evidently because the trial court found that there were in the evidence no facts to constitute such adverse possession. In so holding the trial court was clearly right. There was no evidence whatever that the lode claim had ever been worked "in the usual and customary manner of holding and working similar claims in the vicinity," or had ever been worked at all. All the proof of work done on the lode mining claim prior to the plaintiff's placer locations was proof to show that the annual assessment work had been done thereon. That work consisted in sinking shafts and excavating tunnels on the claims, but in none of them and nowhere on any of the claims was an ore body developed; from none

of them was any ore ever taken, and in none of them was there any "working" of a claim. No witness testified that either of the claims had been worked in the usual and customary mode of holding and working similar claims. It seems too clear to require discussion that doing the annual assessment work, building a road upon a claim, or erecting a structure upon it is not working the same as a mining claim. The statute of Nevada can avail the holder of a mining claim by adverse possession only upon the theory that the claim has been shown to be a workable claim, and that the act of working it involves discovery and stands for proof of discovery. If the defendant claimed adverse possession under the statute of Nevada it was for him not only to plead the statute, but to prove compliance with the same in all particulars. I submit that the decision of the majority of the Court wholly disregards the provisions of that statute, and commits this Court to the proposition that in Nevada mining land, or indeed any land, may be acquired as against all except the United States by filing a location notice, marking the ground and doing the annual assessment work for a period of two years, and without making a discovery. Such is not the law. The words of the statute are: "Holding and working the same in the usual and customary mode of holding and working similar claims in the vicinity." Obviously, this should mean more than merely holding. One who locates a claim, remains in the possession thereof, and does the annual assessment work thereon but makes no discovery, may be con-

ceded to be holding the claim, but he is not working it in the manner prescribed by the statute. If it had been the intention of the legislature to say that title to a mining claim may be had as against all but the Government by locating and holding the same and doing the annual assessment work thereon for a period of two years, we must assume that such would have been the language of the act, and if such had been the language of the act, I submit that it would have been void, for it is a fundamental doctrine of the mining law that one who locates and occupies and does the annual assessment work on mineral land cannot hold the same against another who peaceably and not fraudulently or clandestinely locates the ground and is the first to make discovery thereon. Section 2320 of the Revised Statutes says that no location of a mining claim shall be made until discovery of the vein or lode within the limits of the claim located, and numerous decisions affirm the rule that location can rest only upon actual discovery, and that without discovery no rights can be acquired save the right to retain possession while seeking discovery. King v. Amy & Silversmith Min. Co., 152 U. S. 222, 227; Mining Company v. Tunnel Company, 196 U. S. 337, 345; Jupiter Min. Co. v. Brodie Consol. Min. Co., 11 Fed. 666; Steele v. Tanana Mines R. Co., 148 Fed. 678. The true doctrine is stated in Humphreys v. Idaho Gold Mines Development Co., 120 Pac. 823, where the Court said:

> "It still remains, however, for the person who asserts claim by adverse possession to have

made a mineral discovery and to have performed the annual assessment work, and to have had the boundaries of his claim so marked and indicated as to afford actual notice of the extent and boundaries of his claim and possession, and to have maintained an actual possession and excluded all adverse claimants for the full period prescribed by the statute."

Our decision in Vogel v. Warsing, 146 Fed. 948, 951, sustaining a *prima facie* presumption of discovery, and other similar cases cited in the opinion of the majority of this court herein have no application to the present case. There is no place here for the indulgence of a presumption of discovery. The question of discovery by the lode claimants was directly placed in issue. It was a question of fact. It was the principal issue in the case. The defendant presented all his available testimony to show actual discovery. The jury by special verdicts on that issue alone found that there was no discovery.

[Endorsed]: Dissenting Opinion. Filed March 8, 1918. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

*United States Circuit Court of Appeals for the Ninth Circuit.*

No. 2952.

JOSEPH RALPH,

Plaintiff in Error and Appellant,

vs.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER, and WILLIAM FORMAN,

Defendants in Error and Appellees.

**Judgment U. S. Circuit Court of Appeals.**

In error to and appeal from the District Court of the United States for the District of Nevada.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the District of Nevada, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the appeal in this cause be, and hereby is dismissed, and the judgment of the said District Court in this cause be, and hereby is reversed, with costs in favor of the plaintiff in error and against the defendants in error, and that this cause be, and hereby is remanded to the said District Court for a new trial.

It is further ordered and adjudged by this Court that the plaintiff in error recover against the defendants in error for his costs herein expended, and have execution therefor.

[Endorsed]: Judgment. Filed and entered March 8, 1918. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

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At a stated term to wit, the October Term, A. D. 1917, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Monday, the thirteenth day of May, in the year of our Lord one thousand, nine hundred and eighteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; The Honorable ERSKINE M. ROSS, Circuit Judge; The Honorable WILLIAM H. HUNT, Circuit Judge.

Nos. 2952 and 2953.

JOSEPH RALPH,
Plaintiff in Error and Appellant,
vs.
GEORGE A. COLE et al.,
Defendants in Error and Appellees.

**Order Denying Petition for Rehearing.**

On consideration thereof, and by direction of the Honorable Erskine M. Ross and William H. Hunt, Circuit Judges, before whom, together with the Honorable William B. Gilbert, Circuit Judge, the causes were heard, it is ORDERED that the petition, filed April 3, 1918, on behalf of the defendants in

error for a rehearing of the above-entitled cause be, and hereby is, denied.

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*In the United States Circuit Court of Appeals for the Ninth Circuit.*

No. 2952.

JOSEPH RALPH,

Plaintiff in Error,

vs.

GEORGE A. COLE et al.,

Defendants in Error.

**Motion for Order Staying Issuance of Mandate, etc.**

Now comes the defendants in error and move the Court for an order staying the mandate in the above-entitled cause, upon the grounds:

1. That the defendants in error intend to apply to the Supreme Court of the United States for a writ of certiorari to review the decision of the above-entitled court in the above-entitled cause filed on March 8, 1918, and that thirty days is necessary for the preparation and presentation of said application to the Supreme Court of the United States.

2. Upon the further ground that defendants in error intend, if advised that they may do so, to take a writ of error in the Supreme Court of the United States for the purpose of reviewing the decision in above-entitled proceedings filed as aforesaid, and that thirty days is necessary in which to prepare the papers.

Said motion shall be made upon the records, files and papers in the said cause, and upon the affidavit of George B. Thatcher, one of the defendants in error and one of the attorneys for the defendants in error.

WM. FORMAN.
GEO. B. THATCHER.
A. A. ROSENSHINE.

[Endorsed]: Motion for Order Staying Issuance of Mandate, etc. Filed May 16, 1918. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals for the Ninth Circuit.*

No. 2952.

JOSEPH RALPH,

Plaintiff in Error,

vs.

GEORGE A. COLE et al.,

Defendants in Error.

**Affidavit of George B. Thatcher.**

State of Nevada,
County of Washoe,—ss.

George B. Thatcher, being first duly sworn, deposes and says: That he is one of the defendants in error in the above-entitled cause, and is also one of the attorneys for the defendants in error; that it is the intention of said defendants in error to apply to the Supreme Court of the United States for a writ of certiorari to review the decision of the above-entitled court in the above-entitled cause heretofore rendered and filed on the 8th day of

March, 1918; that it will be impossible for defendants in error to prepare and present its petition for a writ of certiorari to the Supreme Court of the United States within five days from the denial of defendants in error petition for rehearing of the above-entitled cause, and affiant is informed and believes that thirty days will be necessary for the preparation and presentation of its application for certiorari to the Supreme Court of the United States; that this application is not made for the purpose of delaying, but with the intent of presenting to the Supreme Court of the United States for review, the decision of this Honorable Court in the above-entitled cause, and it is the intention of the defendants in error so to do. Affiant further says that it is the intention of the defendants in error, if advised that they may do so, and if allowed and permitted by this Court to do so, to take a writ of error to the Supreme Court of the United States for the purpose of reviewing the decision of this Honorable Court in the above-entitled cause; that thirty days time is necessary in which to prepare the papers necessary in said proceeding; that this application is not made for delaying, but for the purpose of presenting the decision of the above-entitled court in the above-entitled cause to the Supreme Court of the United States for review.

WHEREFORE, affiant, on behalf of himself and his codefendants in error, moves the above-entitled court that the mandate in the above-entitled cause be stayed for the period of thirty days and that the record and proceedings remain with the above-

entitled court and the clerk thereof.

GEORGE B. THATCHER.

Subscribed and sworn to before me this 15th day of May, 1918.

[Seal] WAYNE T. WILSON,
Notary Public.

[Endorsed]: Affidavit of George B. Thatcher in Support of Motion for Order Staying Issuance of Mandate, etc. Filed May 16, 1918. F. D. Monckton, Clerk.

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At a stated term, to wit, the October Term, A. D. 1917, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Thursday, the sixteenth day of May, in the year of our Lord one thousand nine hundred and eighteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; The Honorable WILLIAM W. MORROW, Circuit Judge; The Honorable WILLIAM H. HUNT, Circuit Judge.

No. 2952.

JOSEPH RALPH,
Plaintiff in Error,

vs.

GEORGE A. COLE et al.,
Defendants in Error.

**Order Staying Issuance of Mandate, etc.**

Upon motion of Mr. A. A. Rosenshine, counsel for the defendants in error, and on consideration of the affidavit of Mr. George B. Thatcher, and good cause therefor appearing, ORDERED mandate of this court in the above-entitled cause stayed until the petition to be made on behalf of the defendants in error to the Supreme Court of the United States for the issuance of a writ of certiorari be disposed of, on condition that said petition be filed and docketed in said Supreme Court within thirty (30) days, and agreeably to the Rules of said Supreme Court.

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*United States Circuit Court of Appeals for the Ninth Circuit.*

No. 2952.

JOSEPH RALPH,

Plaintiff in Error,

vs.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER and WILLIAM FORMAN,

Defendants in Error.

**Praecipe for Transcript of Record.**

To the Clerk of the said Court:

Sir: Please make and furnish me with a certified printed Transcript of the Record (including the proceedings had in said Circuit Court of Appeals), and not less than nine uncertified copies thereof, for use

on an application to be made to the Supreme Court of the United States for the issuance of a Writ of Certiorari under section 240 of the Judicial Code, in the above-entitled cause, the said Transcript to consist of a copy of the following:

1. Printed Transcript of Record including a printed copy of the following entitled proceedings that were had and of the papers that were filed in said Circuit Court of Appeals, viz.:

2. Order of Submission, entered May 14, 1917;

3. Order Directing Filing of Opinions, entered March 8, 1918;

4. Opinions, filed March 8, 1918;

5. Judgment, filed and entered March 8, 1918;

6. Order Denying Petition for Rehearing, etc., March [illegible] 1918;

7. Motion for Order Staying Mandate filed May 16, 1918;

8. Affidavit of George B. Thatcher in Support of said Motion, filed May 16, 1918;

9. Order Staying Issuance of Mandate filed May 16, 1918;

10. Praecipe for Transcript of Record;

11. Certificate of Clerk U. S. Circuit Court of Appeals to said Transcript.

GEO. B. THATCHER,
Counsel for the Defendants in Error.

Service of a copy of the within praecipe is hereby admitted this 24th day of May, A. D. 1918.

A. G. ELLIS,
Counsel for the Plaintiff in Error.

[Endorsed]: Praecipe for Transcript of Record. Filed May 27, 1918. F. D. Monckton, Clerk.

*United States Circuit Court of Appeals for the Ninth Circuit.*

No. 2952.

JOSEPH RALPH,

Plaintiff in Error,

vs.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER and WILLIAM FORMAN,

Defendants in Error.

**Certificate of Clerk U. S. Circuit Court of Appeals to Record Certified Under Section 3 of Rule 37 of the Rules of the Supreme Court of the United States.**

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one thousand three hundred and fourteen (1,314) pages, numbered from and including 1 to and including 1,314, marked, respectively, Volume I, II, and III, to be a full, true, and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, excluding all of the original exhibits heretofore placed of record in said Circuit Court of Appeals, made pursuant to praecipe of counsel for the defendants in error, filed on the twenty-seventh day of May, A. D. 1918, and certified under section 3 of Rule 37 of the Rules of the Supreme Court of the

United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this fourth day of June, A. D. 1918.

[Seal] F. D. MONCKTON,
Clerk.

By Paul P. O'Brien,
Deputy Clerk.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Joseph Ralph is plaintiff in error, and George A. Cole, Ed. Malley, Gilbert *Gilbert* C. Ross, J. J. Healey, Guy Davis, George B. Thatcher, and William Forman are defendants in error, No. 2952, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the District Court of the United States for the District of Nevada, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States,

Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the thirty-first day of October, in the year of our Lord one thousand nine hundred and eighteen.

JAMES D. MAHER,
*Clerk of the Supreme Court of the United States.*

[Endorsed:] File No. 26355. Supreme Court of the United States, October Term, 1918. No. 569. George A. Cole et al. vs. Joseph Ralph. Writ of Certiorari.

[Endorsed:] Docketed. No. 2952. United States Circuit Court of Appeals for the Ninth Circuit. Filed Nov. 12 1918. F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2952.

JOSEPH RALPH, Plaintiff in Error,

vs.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY Davis, George B. Thatcher, and William Forman, Defendants in Error.

*Stipulation.*

Whereas, the defendants in error in the above-entitled cause have heretofore filed and presented to the Honorable, the Supreme Court of the United States, their petition for a writ of certiorari for the

purpose of reviewing the record and proceedings in said cause, and,

Whereas, on the 31st day of October, 1918, said petition for writ of certiorari was granted by the Supreme Court of the United States, and there was issued out of said Supreme Court of the United States, its writ of certiorari commanding that in the above entitled cause, the above entitled Court, without delay, send to the said Supreme Court the record and proceedings in said cause so that said Supreme Court may act thereon as of right and according to law,

Now, therefore, it is hereby stipulated and agreed, that the certified transcript of the record heretofore filed in cause No. 568, in the Supreme Court of the United States, entitled George A. Cole, et al., Petitioners, vs. Joseph Ralph, Respondent, by the petitioners upon their petition for a writ of certiorari, may be taken as a return to said writ, and that a certified copy of this Stipulation may be sent up by the Clerk of this Court, the United States Circuit Court of Appeals for the Ninth Circuit, and his return to said writ of certiorari issued in said cause, No. 568, in the Supreme Court of the United States.

Dated this 11th day of November, 1918.

P. G. ELLIS,
*Attorney for Plaintiff in Error.*
GEO. B. THATCHER,
WILLIAM C. PRENTISS,
WM. FORMAN,
*Attorneys for Defendants in Error.*

Endorsed: Stipulation as to Return to Writ of Certiorari. Filed Nov. 25, 1918. F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2952.

JOSEPH RALPH, Plaintiff in Error,

vs.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY DAVIS, GEORGE B. THATCHER, and WILLIAM FORMAN, Defendants in Error.

*Certificate of Clerk U. S. Circuit Court of Appeals to Stipulation as to Return to Writ of Certiorari from Supreme Court U. S.*

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the next two preceding pages to be a full, true and correct copy of a "Stipulation as to Return to Writ of Certiorari", filed in the above-entitled cause on the 25th day of November, A. D. 1918, as the original thereof remains on file and of record in my office.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 25th day of November, A. D. 1918.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk,*
By PAUL P. O'BRIEN,
*Deputy Clerk.*

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2952.

JOSEPH RALPH, Plaintiff in Error,

vs.

GEORGE A. COLE, ED. MALLEY, GILBERT C. ROSS, J. J. HEALEY, GUY Davis, George B. Thatcher, and William Forman, Defendants in Error.

*Return to Writ of Certiorari.*

By direction of the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, I, Frank D. Monckton, as Clerk of said Court, in obedience to the annexed writ of certiorari issued out of the Honorable the Supreme Court of the United States and addressed to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them to send, without delay, to the said Supreme Court the record and proceedings in the above-entitled cause, do attach to the said Writ and send to the said Supreme Court a certified copy of a "Stipulation as to Return to Writ of Certiorari", entered into by and between the attorneys of record, that the Transcript of Record now on file in said cause in the said Supreme Court shall stand as the Return to the said Writ of Certiorari, the original of which stipulation was filed in my office on the 25th day of November, A. D. 1918.

In testimony whereof, I have hereunto set my hand and affixed the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 25th day of November, A. D. 1918.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
*Clerk of the United States Circuit Court of Appeals for the Ninth Circuit,*
By PAUL P. O'BRIEN,
*Deputy Clerk.*

[Endorsed:] File No. 26655. Supreme Court U. S. October Term, 1918. Term No. 569. George A. Cole et al., Petitioners, vs. Joseph Ralph. Writ of certiorari and return. Filed Dec. 4, 1918